

**EXHIBIT 1  
(REDACTED -  
MOTION TO SEAL  
PENDING)**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

- - - - -x

SANDRA M. PETERS, :  
on behalf of :  
herself and all :  
others similarly :  
situated, :

: Case No.

Plaintiff, :

: 1:15-cv-00109-MR

v. :

AETNA, INC.; AETNA :  
LIFE INSURANCE :  
COMPANY; and :  
OPTUMHEALTH CARE :  
SOLUTIONS, INC., :

:  
Defendants. :

- - - - -x

Wednesday, May 30, 2018  
Washington, D.C.

Videotaped Deposition of:

CONSTANTIJN PANIS, Ph.D.,  
called for oral examination by counsel for the  
Defendants, pursuant to notice, at the law offices  
of Gibson, Dunn & Crutcher, LLP, 1050 Connecticut  
Avenue, Northwest, Washington, D.C. 20036-5306,  
before Christina S. Hotsko, RPR, CRR, of Veritext  
Legal Solutions, a Notary Public in and for the  
District of Columbia, beginning at 7:10 a.m., when  
were present on behalf of the respective parties:

1 A. Yes.

2 Q. The top of the page on page 1, there's a  
3 section entitled Scope of Work.

4 Do you see that?

5 A. Yes.

6 Q. Does this section reflect the assignment  
7 you were given by plaintiff's counsel?

8 A. Yeah. Although it's a little vague,  
9 right? It says to provide an opinion on certain  
10 aspects related to potential class certification.

11 Q. I agree it's a little vague. I'm going  
12 to ask you about that.

13 A. Yes.

14 Q. So let's -- let's start just by asking,  
15 is that an accurate reflection of what your  
16 assignment was from plaintiff's counsel?

17 A. It's accurate. Yes.

18 Q. What were the certain aspects that you  
19 were asked to provide an opinion on?

20 A. I believe they are spelled out in more  
21 detail later on in the report. Let's go to  
22 page 9. Specifically, I was asked to look at  
23 the -- the gains that the -- revenues that Optum  
24 derived from the alleged arrangement.

25 On page 10, I was asked to -- or

1 actually it's a little earlier. I was also asked  
2 to establish the number of plan members and plans  
3 that were involved. I forget exactly where that  
4 is located.

5 And then starting at the bottom of page  
6 10, I was asked to analyze claims for which the  
7 responsibility of the plan and the member  
8 combined were equal to the Aetna-allowed amount  
9 and exceeded the provider-allowed amount.

10 Q. Any other aspects that you were asked to  
11 provide an opinion on by plaintiff's counsel?

12 A. Not that I recall. Though there might  
13 be some other ones, small ones.

14 Q. And did you reach any opinions on those  
15 aspects --

16 A. I did.

17 Q. -- that you just described?

18 A. I did.

19 Q. And can you direct me in the report to  
20 your opinions?

21 A. Perhaps the easiest thing to do is to go  
22 to page 14, the summary. Paragraph 54 lists the  
23 number of plans and the number of members who  
24 were overcharged as a result of the alleged  
25 agreement.

1 Paragraph 55 shows the gains that Optum  
2 derived from this agreement.

3 Paragraph 56, it indicates the amounts  
4 by which plans and members were overcharged.

5 Q. So those three paragraphs summarize your  
6 opinions in this case?

7 A. Yeah. Of course the whole report is  
8 relevant, but these are the salient features that  
9 I would like to communicate.

10 Q. Is it your view that these statements in  
11 paragraphs 54 to 56 are expert opinions?

12 A. Yes.

13 Q. And what expertise are you relying on to  
14 make the statements in paragraphs 54 to 56?

15 A. It's an understanding of the way in  
16 which medical payments -- medical services are  
17 paid for by plans, by members, through  
18 co-payments, deductibles, and co-insurance. So  
19 it's a knowledge of medical claims and then  
20 there's knowledge about data processing that is  
21 required to add up the numbers.

22 Q. And other than adding up the numbers,  
23 what other opinions are reflected here in  
24 paragraphs 54 to 56?

25 A. I believe they speak for themselves.

1 Q. Are you providing an opinion in this  
2 case on whether a class should be certified?

3 A. I'm not, no.

4 Q. Were you asked to consider whether a  
5 class should be certified by plaintiff's counsel?

6 A. No.

7 Q. Do you have an understanding of why not?

8 MR. KNOTT: Object to the form.

9 THE WITNESS: No. I've not thought  
10 about it.

11 BY MR. SIGLER:

12 Q. Could you turn, please, to paragraph 10  
13 of your report.

14 A. Yes.

15 Q. Paragraph 10 refers to the fact that you  
16 routinely analyze healthcare claims.

17 Do you see that?

18 A. Yes.

19 Q. Now, earlier today you were describing  
20 some of your involvement in other litigation  
21 matters such as False Claims Act cases.

22 Are there any matters you've been  
23 involved in that you view as particularly  
24 relevant to your work in this case?

25 MR. KNOTT: Object to the form.

1 did you get your understanding reflected here in  
2 paragraph 11?

3 A. In part from Mr. Knott, plaintiff's  
4 counsel, and in part from reviewing the various  
5 materials that I listed at the end of my report.

6 Q. And the second and third sentence of  
7 paragraph 11 refer to allegations in the case,  
8 correct?

9 A. Correct.

10 Q. And in the second sentence when you  
11 refer to the plaintiff's allegations, where did  
12 you get that understanding?

13 A. That could have been from the complaint.  
14 It probably was from the complaint and from  
15 discussions with counsel.

16 Q. And when you refer to plaintiff's  
17 allegation that participants' beneficiaries plans  
18 were overcharged for benefit claims as a result  
19 of charges by Optum, are you offering an opinion  
20 in this case on whether that allegation is  
21 correct?

22 A. No, I'm not.

23 Q. So for purposes of your report, you have  
24 accepted that allegation as true; is that  
25 correct?

1           A. Let me maybe -- let me see here. I  
2 calculate overcharges. So I've reviewed the data  
3 and I concluded that, indeed, plan participants  
4 and beneficiaries and plans were overcharged.

5           So I guess I accept that allegation. I  
6 mean, I confirm the allegation. Let's put it  
7 that way.

8           Q. Are you -- but are you providing an  
9 opinion that the amounts you calculated were  
10 overcharges that resulted from charges by Optum?

11          A. Yes.

12          Q. And are you providing an opinion that  
13 those overcharges were improper?

14          A. No. That would be a legal issue.

15          Q. In the third sentence of paragraph 11,  
16 you say that, "Optum's services are allegedly  
17 concealed as medical services, which were billed  
18 to health benefit plans and paid in part by  
19 members of those plans or the plans themselves."

20                 Is that a summary of the plaintiff's  
21 allegations?

22          A. It is among the allegations.

23          Q. And are you offering an opinion on  
24 whether this allegation is correct?

25          A. I've noticed in the data that certain



1           A.    Yes.

2           Q.    Paragraph 15 contains your understanding  
3   of the plan member class that plaintiff seeks to  
4   have certified, correct?

5           A.    Yes.

6           Q.    And again, you're not offering an  
7   opinion that this class should be certified,  
8   correct?

9           A.    No.   I'm not offering any legal  
10   opinions.

11          Q.    But you're not offering any opinion that  
12   the class should be certified, correct?

13          A.    Correct.

14          Q.    Now, the second sentence of this  
15   paragraph says, "Members may have been  
16   overcharged to the extent that they were  
17   responsible for Optum charges included in medical  
18   claims," correct?

19          A.    Correct.

20          Q.    And are you offering an opinion that  
21   members actually were overcharged or that they  
22   may have been overcharged?

23          A.    Not every member was overcharged.   Some  
24   members did not have any out-of-pocket expenses,  
25   for example, so they would not have been

1 recover damages in the case?

2 MR. KNOTT: Object to the form.

3 THE WITNESS: Again, I'm not offering an  
4 opinion on damages even. I'm offering an opinion  
5 about overcharges. And whether that was improper  
6 is a legal issue. So the damages would be a  
7 legal issue.

8 But it is my opinion that if a member  
9 was not overcharged, that I would not identify  
10 this person as a putative class member.

11 And I mentioned earlier some plan  
12 members did not have any out-of-pocket expenses,  
13 so they would not have been overcharged. But  
14 some members paid deductibles. And in almost all  
15 cases where deductibles were paid, there was no  
16 overcharge either. So there was no out-of-pocket  
17 expense, but not an overcharge.

18 BY MR. SIGLER:

19 Q. But you agree that if a member did not  
20 have any out-of-pocket expenses, that member has  
21 not been overcharged, correct?

22 A. Correct.

23 Q. And if a member paid a deductible, you  
24 agree the member has not been overcharged?

25 A. On that particular claim. Correct.

1 Q. And let me go back to something you said  
2 earlier. You said that you're not providing an  
3 opinion in this case on damages?

4 MR. KNOTT: Object to the form.

5 THE WITNESS: Correct.

6 BY MR. SIGLER:

7 Q. As an economist, do you understand what  
8 damages are?

9 A. I do. But I believe that you're  
10 challenging whether the overcharges were proper,  
11 and I'm not getting into proper or improper  
12 discussions.

13 So the actual damages, you know, I'm  
14 relying on counsel to tell me whether overcharges  
15 equal damages or whether the damages are some  
16 different amount. I'm not getting into the legal  
17 aspects of that.

18 Q. So when you provide calculations in your  
19 report of overcharges, you're not providing an  
20 opinion on whether those calculations reflect  
21 proper or improper overcharges?

22 A. Correct.

23 Q. You're just providing an opinion and  
24 calculation on the difference between one set of  
25 numbers and another set of numbers, not providing

1 an opinion on which set of numbers is correct; is  
2 that fair?

3 MR. KNOTT: Object to the form.

4 THE WITNESS: That's fair.

5 BY MR. SIGLER:

6 Q. Now, have you ever provided an expert  
7 opinion on damages in any other case?

8 A. Yes.

9 Q. And in that other case, you were able to  
10 opine on what constitutes damages without  
11 worrying about whether it's a legal issue?

12 MR. KNOTT: Object to the form.

13 THE WITNESS: Because counsel would tell  
14 me what types of amounts would be part of the  
15 damages.

16 BY MR. SIGLER:

17 Q. As an economist, what does the  
18 word "damages" mean?

19 MR. KNOTT: Object to the form.

20 THE WITNESS: It's not an economic term.  
21 So as an economist, my opinion -- my  
22 understanding of damages is similar to the  
23 layman's understanding.

24 BY MR. SIGLER:

25 Q. Okay. Well, as a layman understanding,

1     what does "damages" mean?

2             MR. KNOTT: Object to the form.

3             You can answer.

4             THE WITNESS: It is monetary amounts  
5     that were lost due to a certain behavior, an  
6     improper behavior.

7     BY MR. SIGLER:

8             Q. And is it your understanding that the  
9     overcharges alleged by plaintiff in this case  
10    meet that definition?

11            A. Well, again, that's a legal issue, you  
12    know, whether these overcharges were proper or  
13    not. And I'm not opining on that. I'm just  
14    calculating what the overcharges were or, as you  
15    categor -- as you phrased it, calculating the  
16    difference between two numbers.

17            Q. And why is it necessary to a calculation  
18    of damages to know whether the conduct at issue  
19    was proper or not?

20            MR. KNOTT: Object to the form.

21            THE WITNESS: Again, that sounds like a  
22    legal issue. But if -- if the judge or jury  
23    decides that the arrangement was perfectly legal,  
24    then I believe there would be no damages. There  
25    would have been overcharges the way I calculated

1           Q. And did you consider the discussions  
2 with counsel in reaching a view on whether the  
3 amended complaint impacts your report in this  
4 case?

5           A. Can you repeat that?

6           MR. SIGLER: Could you read it back?  
7           (The reporter read the record as  
8 requested.)

9           THE WITNESS: Nothing surfaced that  
10 would lead me to believe that I would need to  
11 amend my report.

12 BY MR. SIGLER:

13          Q. Is it possible that you would want to  
14 amend your report or offer a new report if the  
15 amended complaint were accepted?

16          MR. KNOTT: Object to the form.

17          THE WITNESS: It's possible. Again, I  
18 have not reviewed the amended complaint in  
19 detail. I haven't seen anything that would  
20 prompt me to revise my report, but it's possible.

21 BY MR. SIGLER:

22          Q. Let's go back to the report,  
23 paragraph 16.

24          A. Yes.

25          Q. Does paragraph 16 reflect your

1 understanding of what health benefit plan class  
2 plaintiff seeks to have certified?

3 A. Yes.

4 Q. And you're not providing an opinion on  
5 whether this class, this proposed class, should  
6 be certified, correct?

7 A. Correct.

8 Q. Now, on the second sentence you make the  
9 statement "Plans may have been overcharged to the  
10 extent they were responsible for Optum charges  
11 included in medical claims."

12 Do you see that?

13 A. Yes.

14 Q. And are you offering an opinion on  
15 whether plans actually were overcharged or  
16 whether they may have been overcharged?

17 A. It's possible that some plans did not  
18 make any payments, and they would not have been  
19 overcharged.

20 Q. And so is it your opinion that plans may  
21 have been overcharged depending on their  
22 particular claims experience?

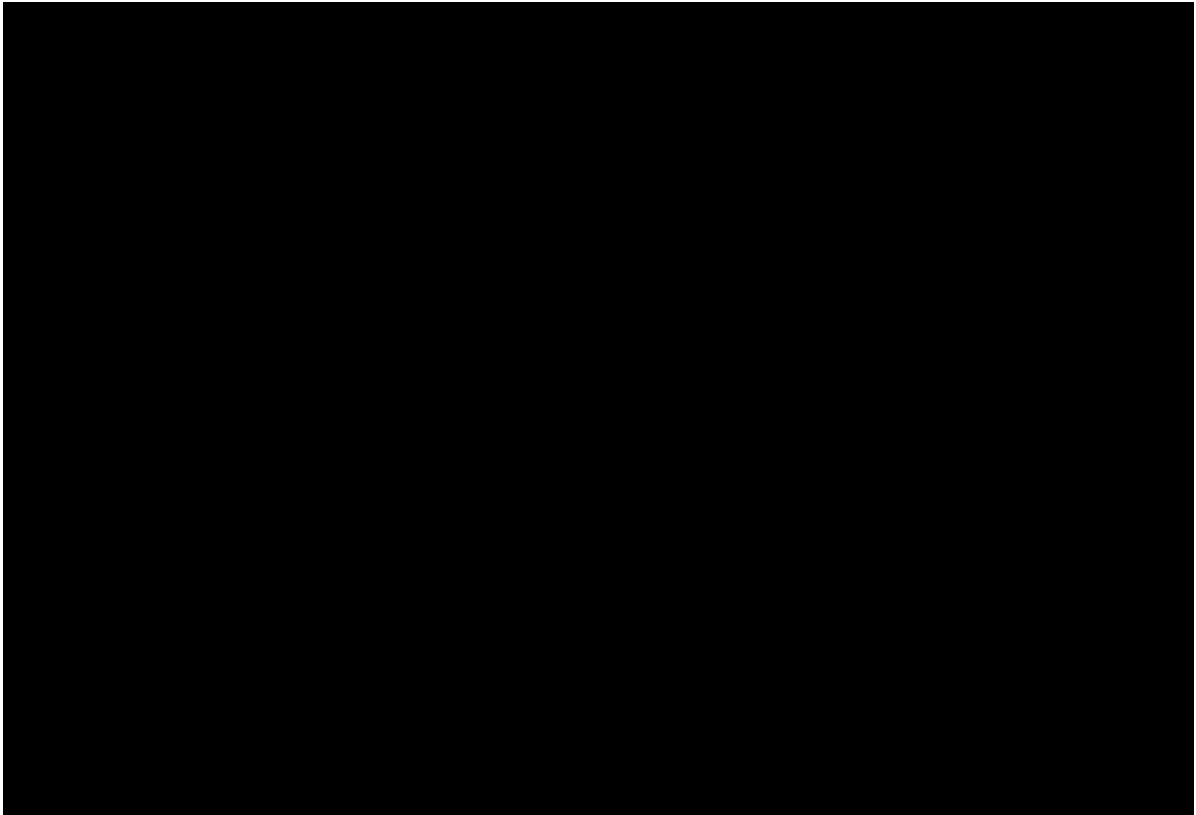
23 MR. KNOTT: Object to the form.

24 THE WITNESS: Yes.

25

1 BY MR. SIGLER:

2 Q. And how would you find out whether any  
3 particular plan was overcharged?



16 Q. Have you, in connection with your report  
17 or your work subsequent to the report, determined  
18 whether any particular health plan was  
19 overcharged using your analysis?

20 A. No, I have not.

21 Q. Have you determined whether any  
22 particular plan member was overcharged based on  
23 your analysis?

24 A. Yes.

25 Q. And what work have you done in that



1 would point to as a reference for how you're  
2 using it in this case?

3 A. No. I defined it for the purposes of  
4 this case.

5 Q. And do you define it somewhere in your  
6 report what overcharge means?

7 A. I'm not sure where it first appears,  
8 where it's defined. It's certainly implicitly  
9 defined in paragraph 30, right, where I calculate  
10 one thing, calculate another thing, and call the  
11 difference an overcharge.

12 Q. Using the terminology we were using  
13 earlier in reference to this illustrative  
14 example, is the overcharge the difference of a  
15 member or plan responsibility calculated using  
16 the Aetna per-visit rate versus using the Optum  
17 downstream rate?

18 A. Correct.

19 Q. And is it plaintiff's contention in this  
20 case that the Optum downstream rate should have  
21 been used to calculate member and plan  
22 responsibility?

23 A. I believe that that's the plaintiff's  
24 contention. Yes.

25 Q. And are you -- you're not providing an

1 opinion that the Optum downstream rate was  
2 required to be used to calculate member and plan  
3 responsibility, correct?

4 A. Correct.

5 Q. Under your use of the term "overcharge,"  
6 if a member or plan was overcharged, was that  
7 member or plan injured?

8 MR. KNOTT: Object to the form.

9 THE WITNESS: Again, that's -- that's --  
10 that gets to damages, that gets to a legal issue,  
11 as to whether the overcharge was proper. And I'm  
12 not making a statement whether it's proper or  
13 improper.

14 If the judge or jury decides that the  
15 overcharge was improper, then that would  
16 translate into an injury.

17 BY MR. SIGLER:

18 Q. And as you used the term "overcharge,"  
19 would the amount of an overcharge -- if a judge  
20 or jury finds that the plaintiff's theory is  
21 valid, would the amount of that overcharge equal  
22 damages?

23 MR. KNOTT: Object to the form.

24 THE WITNESS: For this particular claim,  
25 that would be the damage. At least perhaps part

1 A. Not in detail, but I've seen it. Yes.

2 Q. Did you see the hours and hours of  
3 questions about her transaction records between  
4 her and her treating provider in that transcript?

5 MR. KNOTT: Object to the form.

6 THE WITNESS: I have not seen that, no.

7 If it helps, I would imagine it's messy.

8 BY MR. SIGLER:

9 Q. Right. So -- and in fact, I believe  
10 that may be the word that she used to describe  
11 it.

12 A. Okay.

13 Q. So -- but that type of a messy analysis  
14 would be necessary to figure out what a  
15 particular member paid, still owes, doesn't still  
16 owe on amounts with her -- with his or her  
17 treating provider, correct?

18 MR. KNOTT: Object to the form.

19 THE WITNESS: It would also be possible  
20 to establish the unpaid amount from provider  
21 records, which tend to be much less messy.

22 BY MR. SIGLER:

23 Q. How much experience do you have  
24 reviewing provider billing records?

25 A. A lot.

1 Q. And in your view, they're not messy?

2 MR. KNOTT: Object to the form.

3 THE WITNESS: They're -- they're not as  
4 clean as Medicare records, for example, but  
5 they're plenty clean to analyze.

6 BY MR. SIGLER:

7 Q. You haven't reviewed any of the provider  
8 records at issue in this case, correct?

9 A. You know, I -- I -- not specifically for  
10 this case, but I did have a case once of a --  
11 where I was assisting counsel for a physical  
12 therapist in North Carolina. So I've seen  
13 physical therapy billing records.

14 Q. What case was that?

15 A. It's -- I don't think it's listed  
16 because it didn't lead to a report --

17 Q. Okay.

18 A. -- or no filing case.

19 Q. And do you have any idea whether that  
20 provider was involved with Optum or the issues in  
21 this case?

22 A. No. This was about Medicare records.

23 Q. Now, Dr. Panis, you testified that you  
24 believe plaintiff's contention in this case is  
25 that member and plan responsibility should be

1     calculated based on the Optum downstream rates,  
2     correct?

3             MR. KNOTT:   Object to the form.

4             THE WITNESS:   Correct.

5     BY MR. SIGLER:

6             Q.   What's the basis for that contention, to  
7     your knowledge?

8             A.   The complaint, I think -- or the basis  
9     of the contention?   It would be my understanding  
10    that -- based on -- I'm not sure what the basis  
11    would be.

12            Q.   Have you -- strike that.

13            Let's go to paragraph 36.

14            A.   Yes.

15            Q.   So there's a section on -- on this page  
16    beginning at paragraph 35, continuing through  
17    paragraph 38, discussing Optum's gain --

18            A.   Correct.

19            Q.   -- correct?

20            A.   Yes.

21            Q.   And in paragraph 6 -- excuse me, in  
22    paragraph 36, you provide the -- a calculation of  
23    gain on the example we were just discussing,  
24    correct?

25            A.   Correct.

1 Q. Now, what does the term "gain" mean as  
2 you're using it here?

3 A. Again, there could be all kinds of  
4 definitions. In this case, it is the difference  
5 between what Optum received from Aetna on behalf  
6 of the plan and the payment that Optum made to  
7 the provider.

8 Q. And apart from the calculation that you  
9 just described, does the term "gain" have meaning  
10 to you as an economist?

11 A. I'm sure. It's a -- it's the difference  
12 between a -- an income and a cost.

13 Q. And is it your understanding that the  
14 plaintiff in this case is seeking to recover gain  
15 in some way?

16 A. I'm not sure exactly what the  
17 plaintiff's seeking to recover in this context.

18 Q. And you were asked to calculate Optum's  
19 gain as reflected here in your report, correct?

20 A. I was, yes.  
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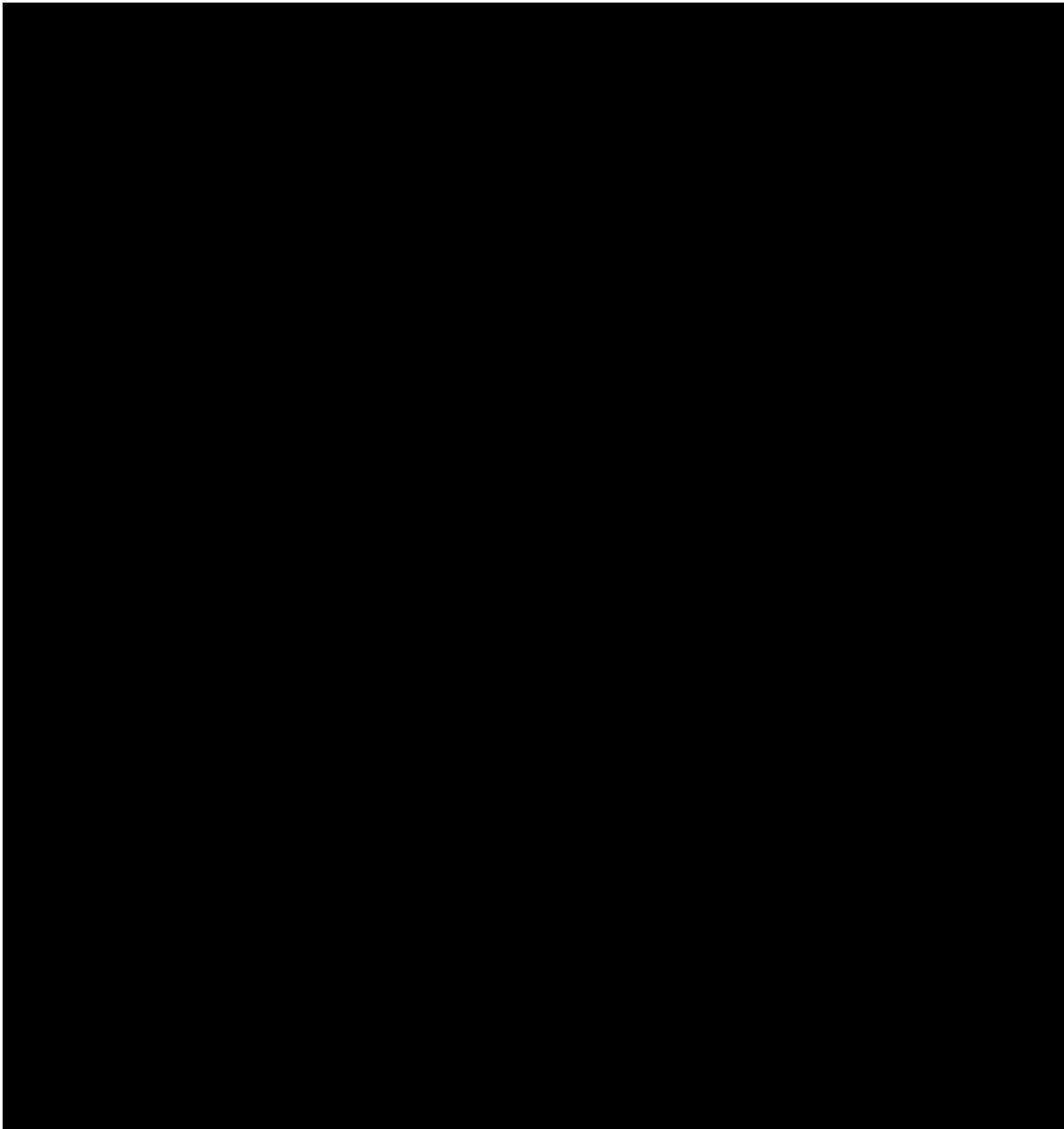


1           Q. In general, is the gain to Optum  
2 equivalent to the alleged overcharge in your  
3 report?

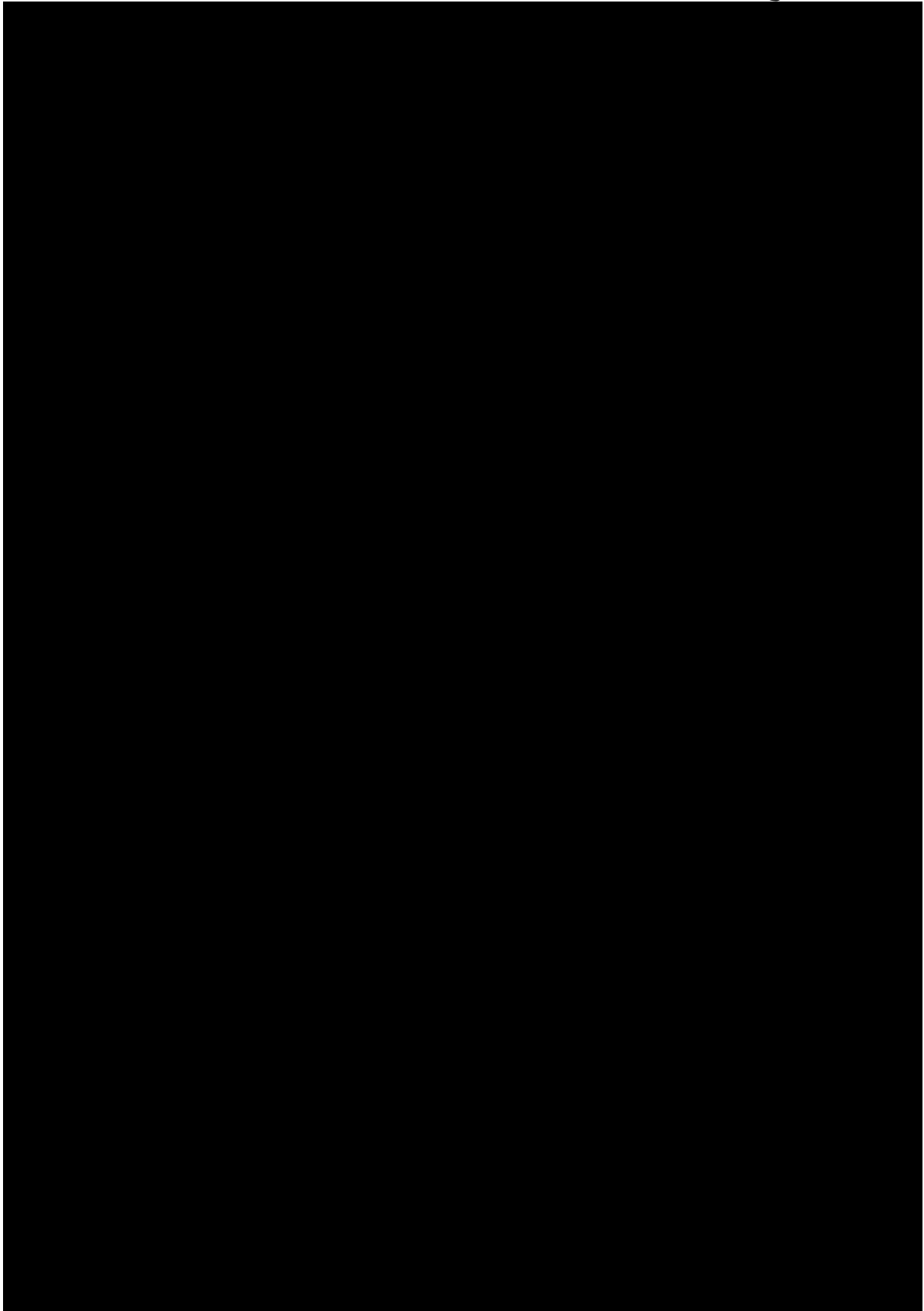
4           A. In general, yes.

5           Q. And are there situations in which it is  
6 not?

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1 slightly different.

2 Q. Does it matter for purposes of  
3 calculating the gain to Optum what the amounts  
4 paid to Optum were used for by Optum?

5 MR. KNOTT: Object to the form.

6 THE WITNESS: For my purposes, no.

7 BY MR. SIGLER:

8 Q. And have you seen the  
9 term "administrative fee" used in this case?

10 A. Sure.

11 Q. You don't use that term in your report,  
12 correct?

13 A. Correct.

14 Q. Why is that?

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22 Q. And I'm just -- I want to get back to  
23 the question I asked.

24 Is there a reason -- well, strike that.

25 Is it relevant to your analysis whether

1 some portion of the Optum amount is an  
2 administrative fee or not?

3 MR. KNOTT: Object to the form.

4 THE WITNESS: No. Given the fairly  
5 precise and narrow definition of what I was asked  
6 to calculate, no, there is no role for  
7 administrative fees or any other expense.

8 BY MR. SIGLER:

9 Q. Okay. So it doesn't matter, for  
10 purposes of your opinions and your calculations,  
11 whether the amounts paid to Optum were  
12 administrative or for something else?

13 MR. KNOTT: Object to the form.

14 THE WITNESS: Correct.

15 BY MR. SIGLER:

16 Q. Does the term "administrative fee" have  
17 a defined meaning to economists?

18 MR. KNOTT: Object to the form.

19 THE WITNESS: It's not an economic term.  
20 You know, it's a fee used for the administration  
21 in this case of claims.

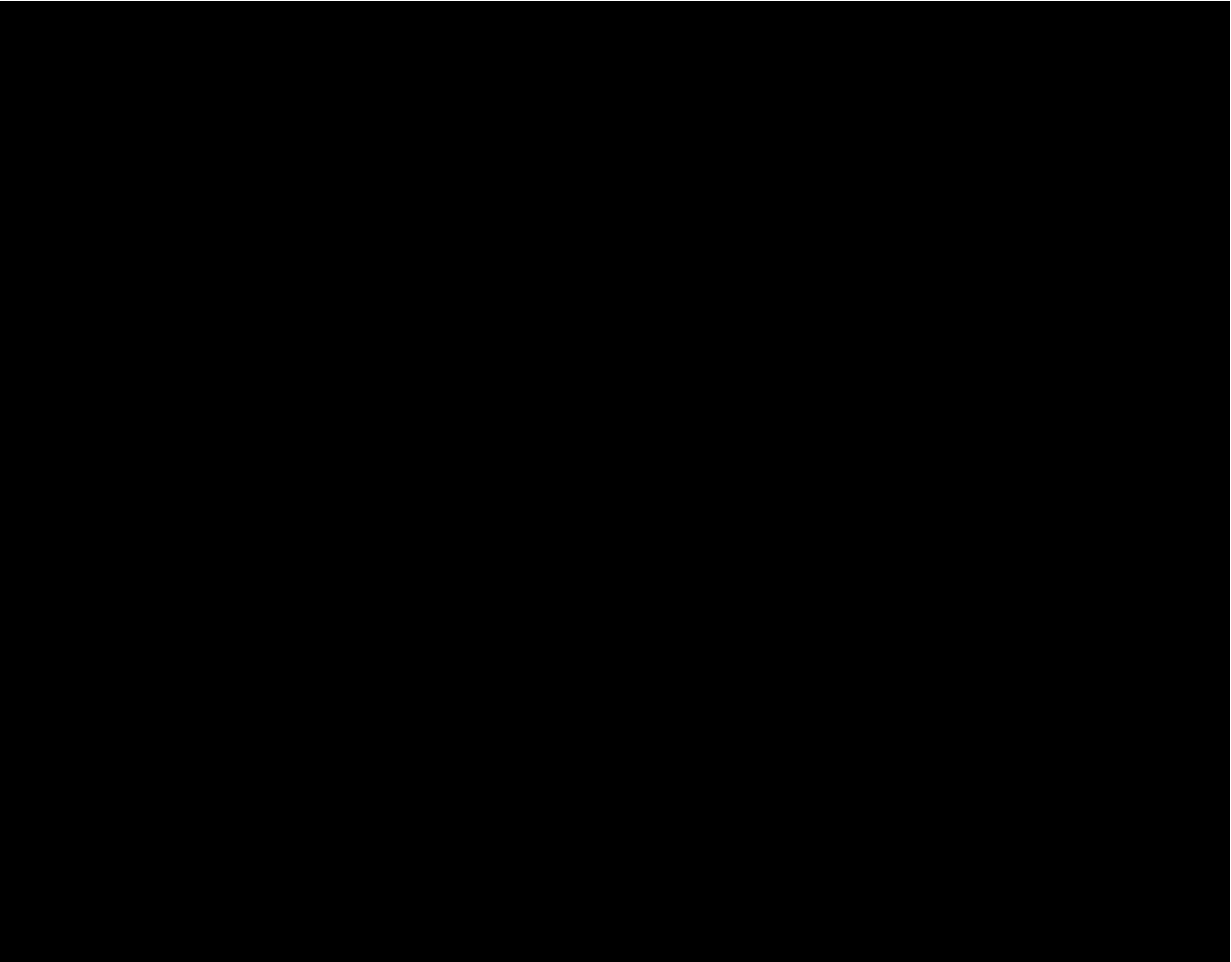
22 BY MR. SIGLER:

23 Q. But outside of this case, does it have a  
24 defined meaning?

25 A. Not necessarily, no.

1           Q. And you're not providing an opinion on  
2 this case on whether something is administrative  
3 or something else, correct?

4           A. Correct.



19           Q. Okay. Now, you acknowledged a few  
20 minutes ago that some of the amounts paid to  
21 Optum would have been used for Optum's costs and  
22 expenses, correct?

23           A. Sure.

24           MR. KNOTT: Object to the form.

25           THE WITNESS: Yes.

1 BY MR. SIGLER:

2 Q. So Optum -- not all of the amounts paid  
3 to Optum would have gone to Optum's bottom line,  
4 correct?

5 MR. KNOTT: Object to the form.

6 THE WITNESS: Correct. And Optum  
7 provided services that were useful.

8 BY MR. SIGLER:

9 Q. And as an economist, do you believe that  
10 it's an appropriate damages model to recoup from  
11 Optum all of the amounts that Optum paid,  
12 including those amounts that it spent providing  
13 those services?

14 MR. KNOTT: Object to the form.

15 THE WITNESS: It's not an economic  
16 issue. It's a legal issue.

17 BY MR. SIGLER:

18 Q. So you're not providing an opinion as an  
19 economist on whether that's an appropriate model  
20 that you've calculated here?

21 MR. KNOTT: Object to the form.

22 THE WITNESS: Correct.

23 BY MR. SIGLER:

24 Q. Were you instructed by plaintiff's  
25 counsel how to calculate the Optum gain model

1     that you have reflected here in your report?

2             A.    Yes.

3             Q.    And is the same true with respect to the  
4     overcharge model, you were instructed by  
5     plaintiff's counsel how to do that?

6             A.    Yes.

7             Q.    And you carried out those calculations  
8     on both models based on the instructions from  
9     plaintiff's counsel, correct?

10            A.    Correct.

11            Q.    If you were analyzing a disgorgement of  
12     profits model, you would do it differently than  
13     you have done these calculations here; is that  
14     correct?

15            MR. KNOTT:   Object to the form.   Vague.

16            THE WITNESS:   It would all depend on  
17     which profits are disgorged.   It comes down to  
18     definitions.

19     BY MR. SIGLER:

20            Q.    Well, would you agree that the gain to  
21     Optum that you're discussing in your report is  
22     not Optum's profit --

23            MR. KNOTT:   Object --

24     BY MR. SIGLER:

25            Q.    -- for its services?

1 MR. KNOTT: Object to the form. It's  
2 vague.

3 THE WITNESS: I agree with it.

4 BY MR. SIGLER:

5 Q. A profit to Optum would be some lower  
6 amount after taking out the cost and expenses of  
7 providing those services, correct?

8 MR. KNOTT: Object to the form. It's  
9 vague.

10 THE WITNESS: I have no insight into  
11 Optum's costs, but I would imagine that they're  
12 positive and that there is -- that the bottom  
13 line profit is less than the gain as defined  
14 here.

15 BY MR. SIGLER:

16 Q. In paragraph 38 of your report you make  
17 the statement "Insofar related to claims that  
18 were covered by self-insured plans, this amount  
19 can also be viewed as gain to Aetna, which was  
20 able to avoid using its own funds to pay these  
21 amounts."

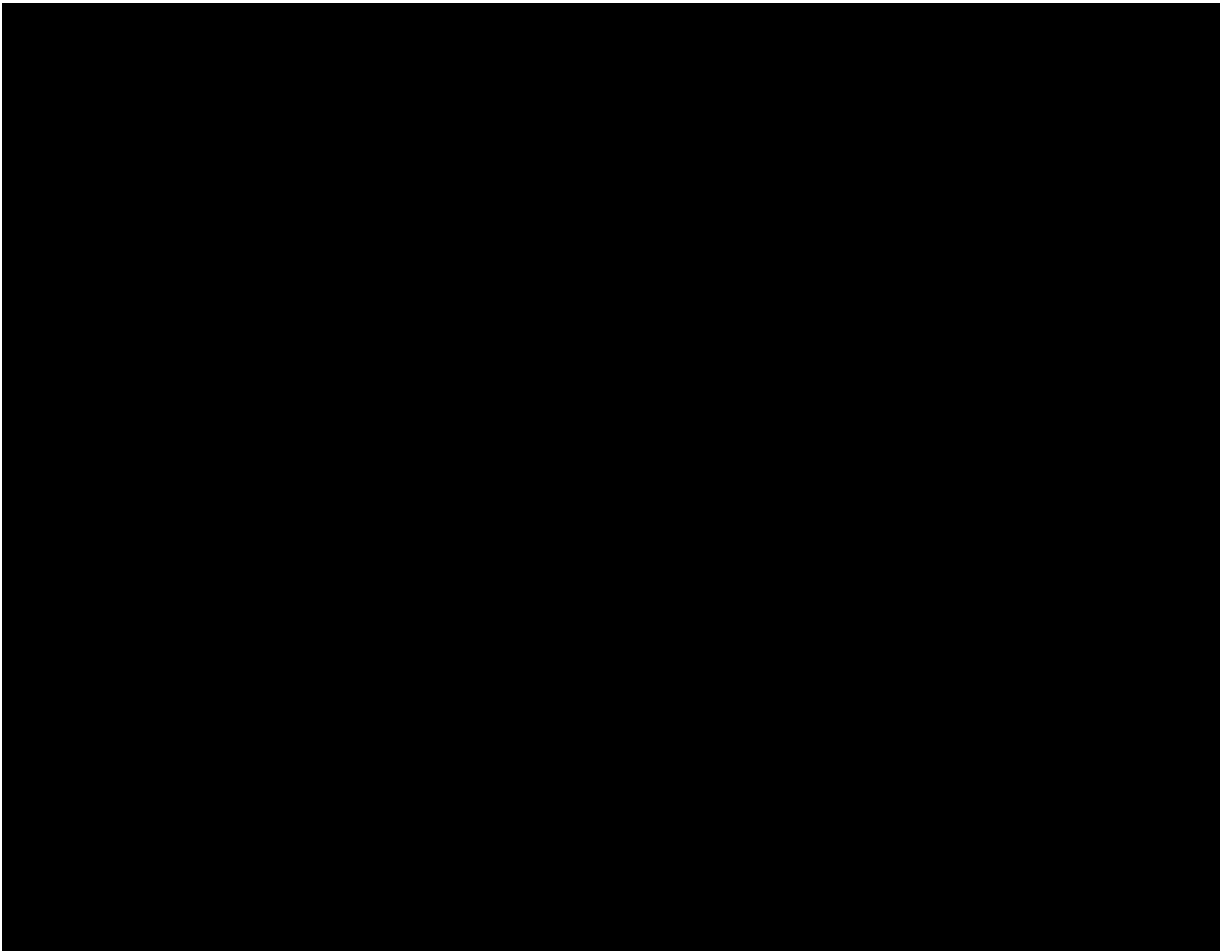
22 Do you see that?

23 A. Yes.

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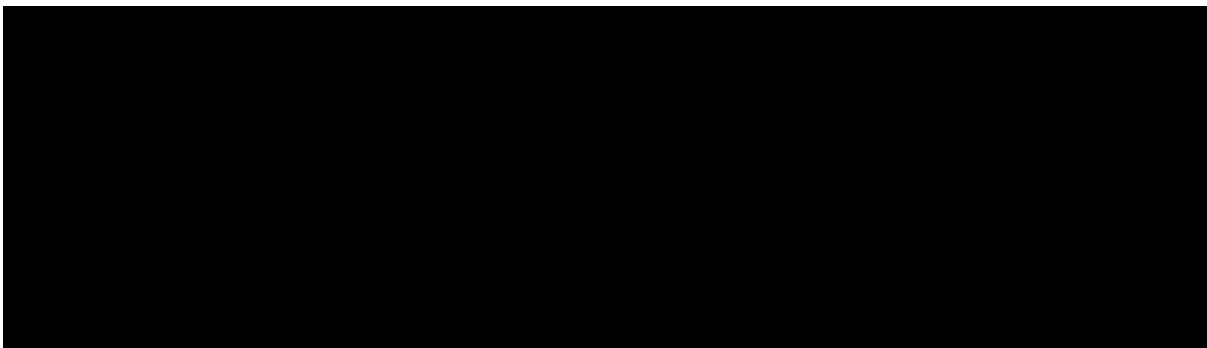


Q. For purposes of a gain to Optum, are  
plaintiffs seeking to recover the amounts paid by  
Aetna on insured plans?

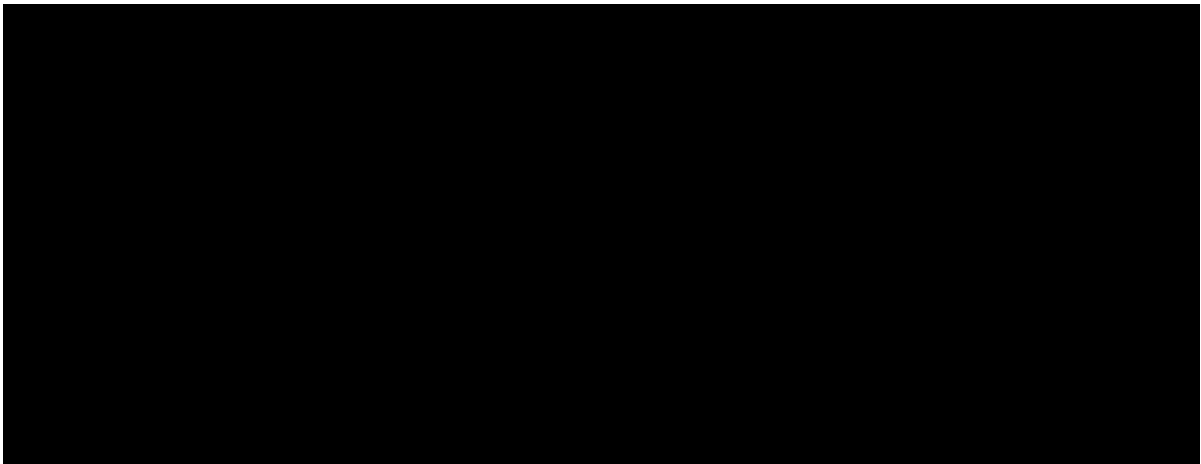
MR. KNOTT: Object to the form.

THE WITNESS: I don't know.

BY MR. SIGLER:



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Q. Going back to paragraph 38 in the discussion of Aetna, what does it mean to say that Aetna may have been able to avoid using its own funds to pay these amounts?

A. So the idea is that a self-insured plan as in contracts with Aetna, an ASO contract, to administer claims. Including in the administration of claims would be claims to physical therapists and chiropractors. And so Aetna, in principle, needs to -- is responsible for administering these claims.

It's contracted with Optum to administer those claims, and it made payments to -- or on behalf of plans, it made payments to Optum, but those are payments that, at least for the administration of the claims, Aetna would have needed to make itself.

Q. So does this go back to the discussion



1 we were having earlier about what administrative  
2 services contracts provide?

3 A. What it covers. Sure.

4 Q. And again, you haven't looked at any of  
5 those contracts to determine what they actually  
6 cover, correct?

7 A. Correct.

8 Q. So if any particular contract covered  
9 only Aetna's administrative costs and not costs  
10 associated with Optum, you would agree that this  
11 statement does not apply, correct?

12 MR. KNOTT: Object to the form.

13 THE WITNESS: It would depend on the  
14 language of the contract.

15 BY MR. SIGLER:

16 Q. Do you have an opinion on whether Aetna  
17 was required to provide the types of services  
18 that Optum was performing under any of Aetna's  
19 administrative services contracts?

20 A. Well, we've discussed this, right? In  
21 principle, an ASO contract provides for claims  
22 administration services. And in principle, that  
23 includes all claims under a certain plan.

24 Now you're saying that perhaps some  
25 claim administration services may have been

1 excluded, that's possible, theoretically. I  
2 haven't seen it. I haven't accounted for it.

3 Q. Right. And you haven't seen one way or  
4 the other what these contracts provide, correct?

5 A. Correct.

6 Q. Do you know whether the services  
7 provided by Optum are services that Aetna was  
8 providing before it entered into the Optum  
9 relationship?

10 A. I don't know that.

11 Q. If Aetna was not already providing these  
12 services and the Optum services were increased or  
13 enhanced services not provided by Aetna, does  
14 that impact your view on this issue?

15 MR. KNOTT: Object to the form.

16 THE WITNESS: I guess it would depend on  
17 the language of the contract.

18 MR. SIGLER: Good time to take a break.

19 VIDEO TECHNICIAN: Off the record at  
20 9:52.

21 (A recess was taken.)

22 VIDEO TECHNICIAN: Media unit 3. Back  
23 on the record at 10:08.

24 BY MR. SIGLER:

25 Q. Dr. Panis, in reviewing the claims data

1 haven't seen any documents. I haven't picked up  
2 on any language in documents where that would be  
3 discussed.

4 BY MR. SIGLER:

5 Q. Do you know whether the goal, from  
6 Aetna's perspective, was to achieve savings  
7 through lower rates for services and/or  
8 management of those services to reduce the number  
9 of services or visits in those markets?

10 MR. KNOTT: Object to the form.

11 THE WITNESS: I don't know that.

12 BY MR. SIGLER:

13 Q. If there were documents or information  
14 about those goals of the relationship or whether  
15 those goals were successful, would those be  
16 relevant to your analysis of the Aetna-Optum  
17 relationship?

18 MR. KNOTT: Object to the form.

19 THE WITNESS: No. My -- my charge was  
20 to calculate the things that I calculated. And  
21 any advantages to Optum or Aetna of the contracts  
22 would be irrelevant to the types of overcharges  
23 that I calculated.

24 BY MR. SIGLER:

25 Q. If the Aetna-Optum relationship lowered

1 the cost of physical therapy and chiropractic  
2 services in these markets, would that be  
3 beneficial to health plans and plan members?

4 MR. KNOTT: Object to the form.

5 THE WITNESS: It may well be. Sure.

6 BY MR. SIGLER:

7 Q. How would it be?

8 A. Well, eventually the cost of providing  
9 medical care could have been lowered.

10 Q. And lower cost of chiropractic and  
11 physical therapy services would result in lower  
12 payments by self-funded plans and members for  
13 those services, correct?

14 MR. KNOTT: Object to the form.

15 THE WITNESS: Sure.

16 BY MR. SIGLER:

17 Q. If there were benefits flowing to plan  
18 sponsors and plan members from the Aetna-Optum  
19 relationship through this lower costs, who should  
20 pay for those benefits, in your view?

21 MR. KNOTT: Object to the form.

22 THE WITNESS: Well, so benefits, then  
23 presumably it's because the cost of providing  
24 services would be lowered. And so the providers  
25 apparently would take lower reimbursement rates.

1 along was appropriate or inappropriate, correct?

2 A. No. That's a legal issue.

3 Q. And you're not providing an opinion on  
4 expectations of anyone, right, about that?

5 A. Correct.

6 Q. Dr. Panis, let's go to paragraph 39.  
7 Paragraph 39 starts with "I have been instructed  
8 by plaintiff's counsel to identify," and goes on  
9 to describe a population of claims, correct?

10 A. Yes.

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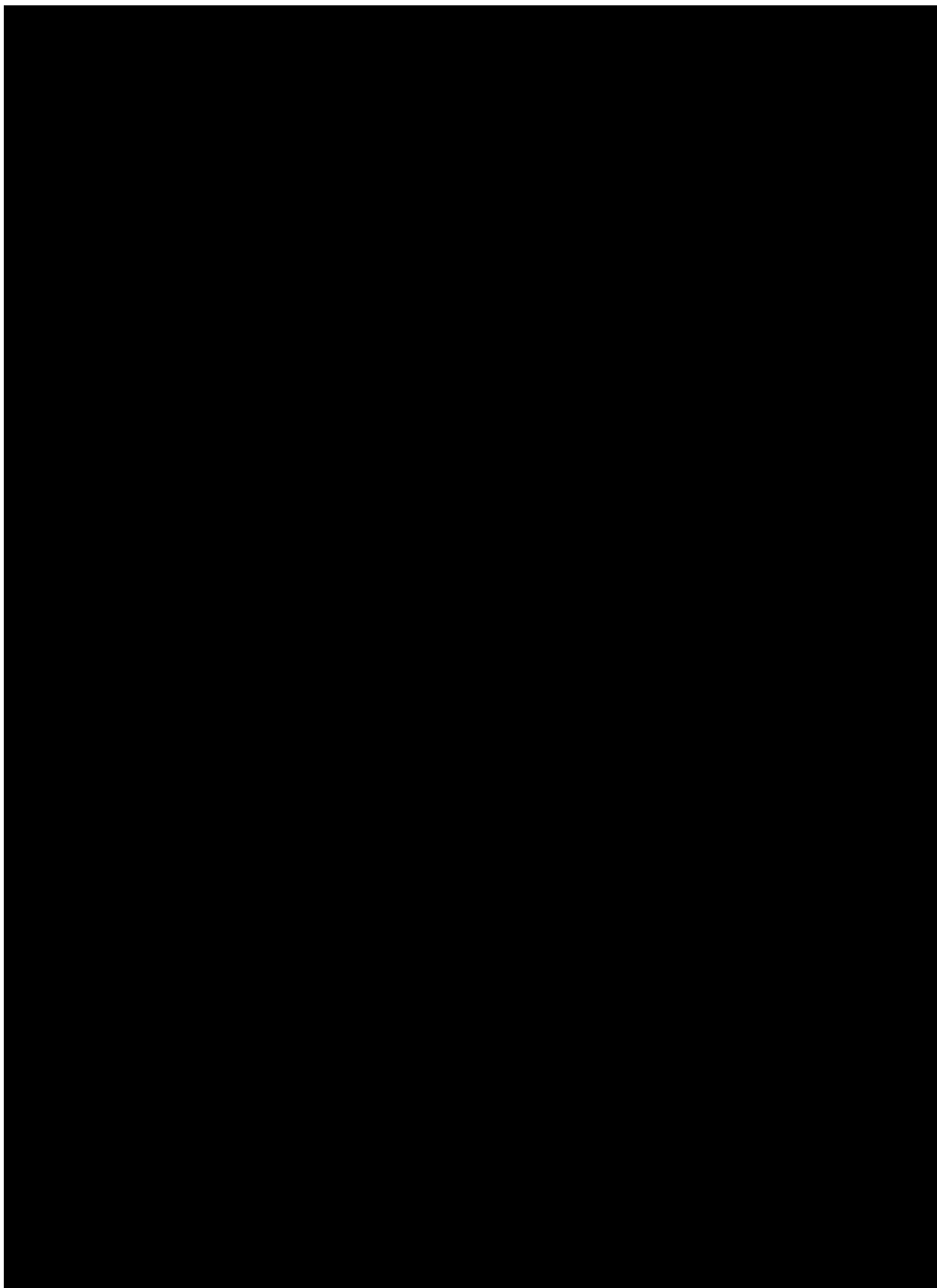
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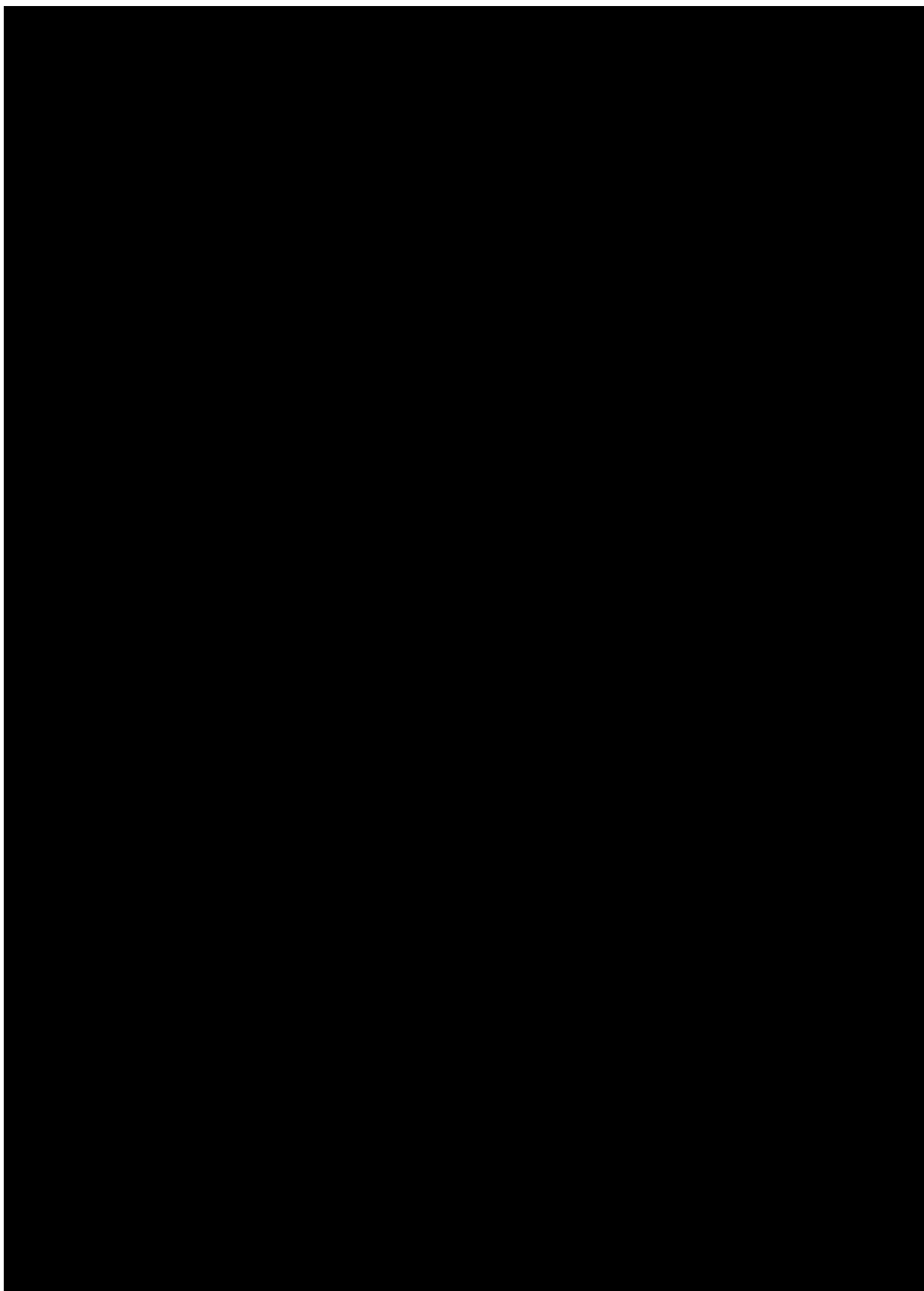
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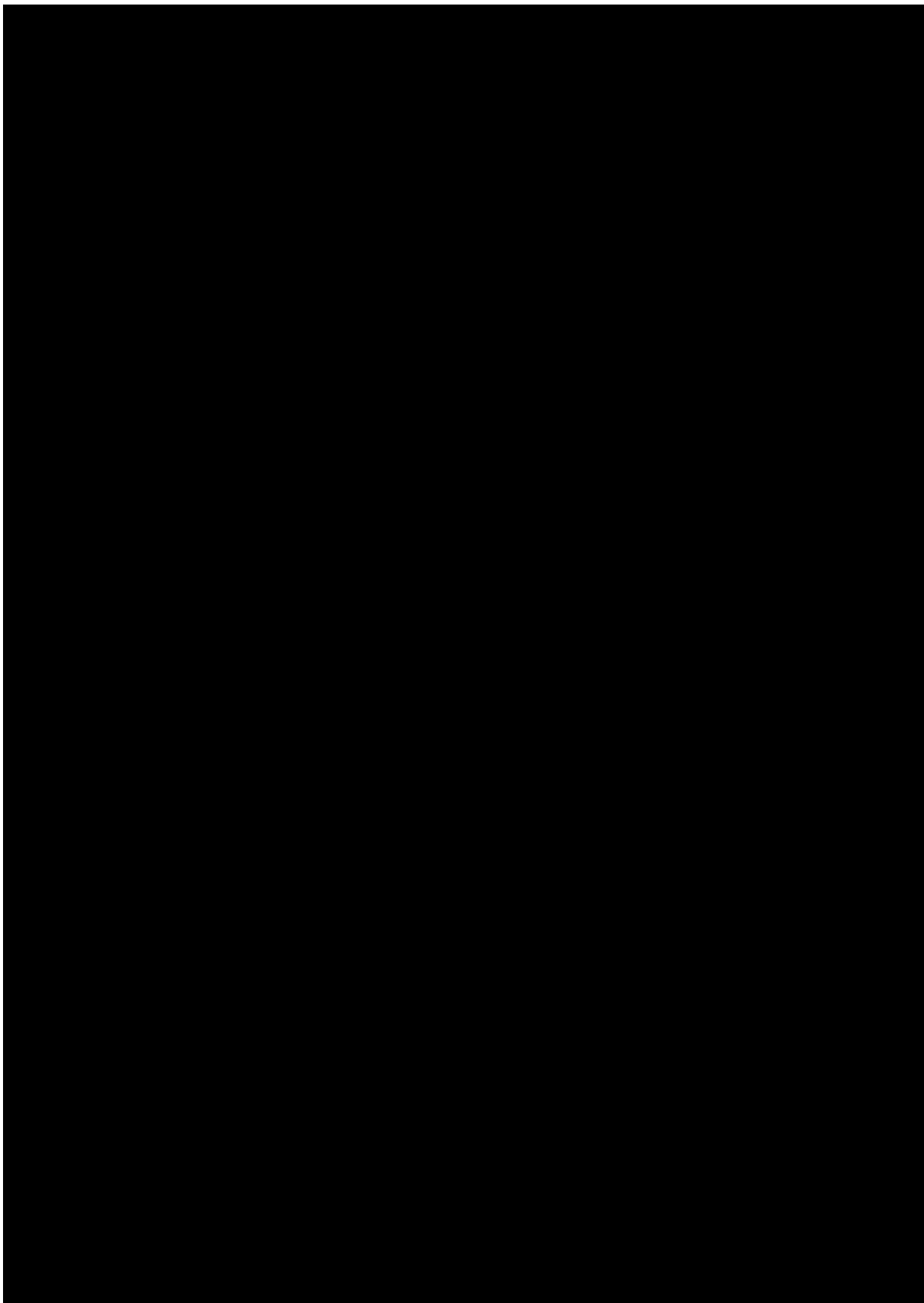
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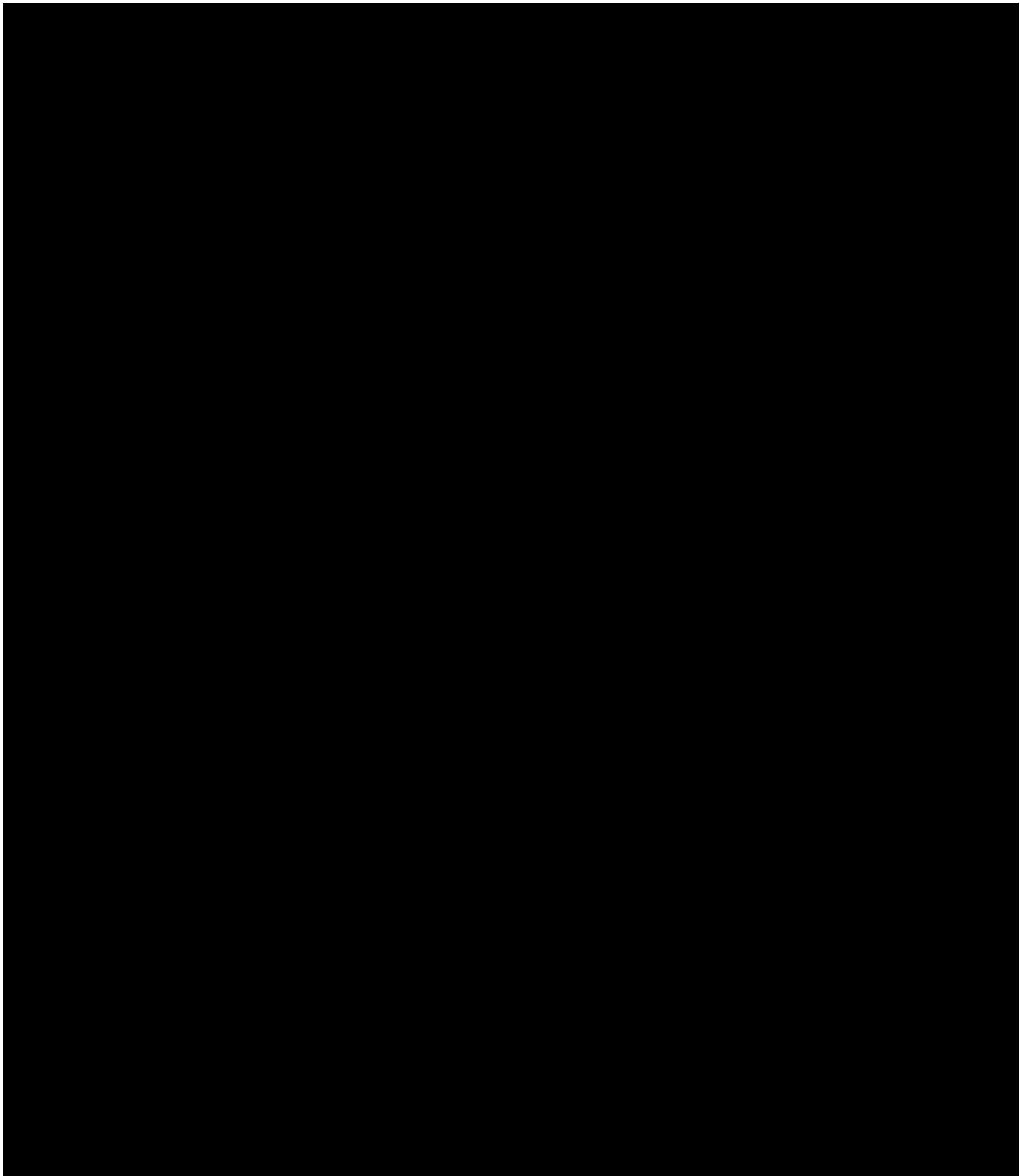


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22           Is that your understanding of claims  
23   involving deductibles that Optum's charges were  
24   not collected?

25           A.   Yes.   For the most part.   I believe

1 there's an exception for has accounts, health  
2 savings accounts.

3 Q. And you get to that later in your  
4 report, correct?

5 A. I do.



23 Q. So approximately when did you exclude  
24 these claims?

25 A. I'm not sure exactly. Maybe a month

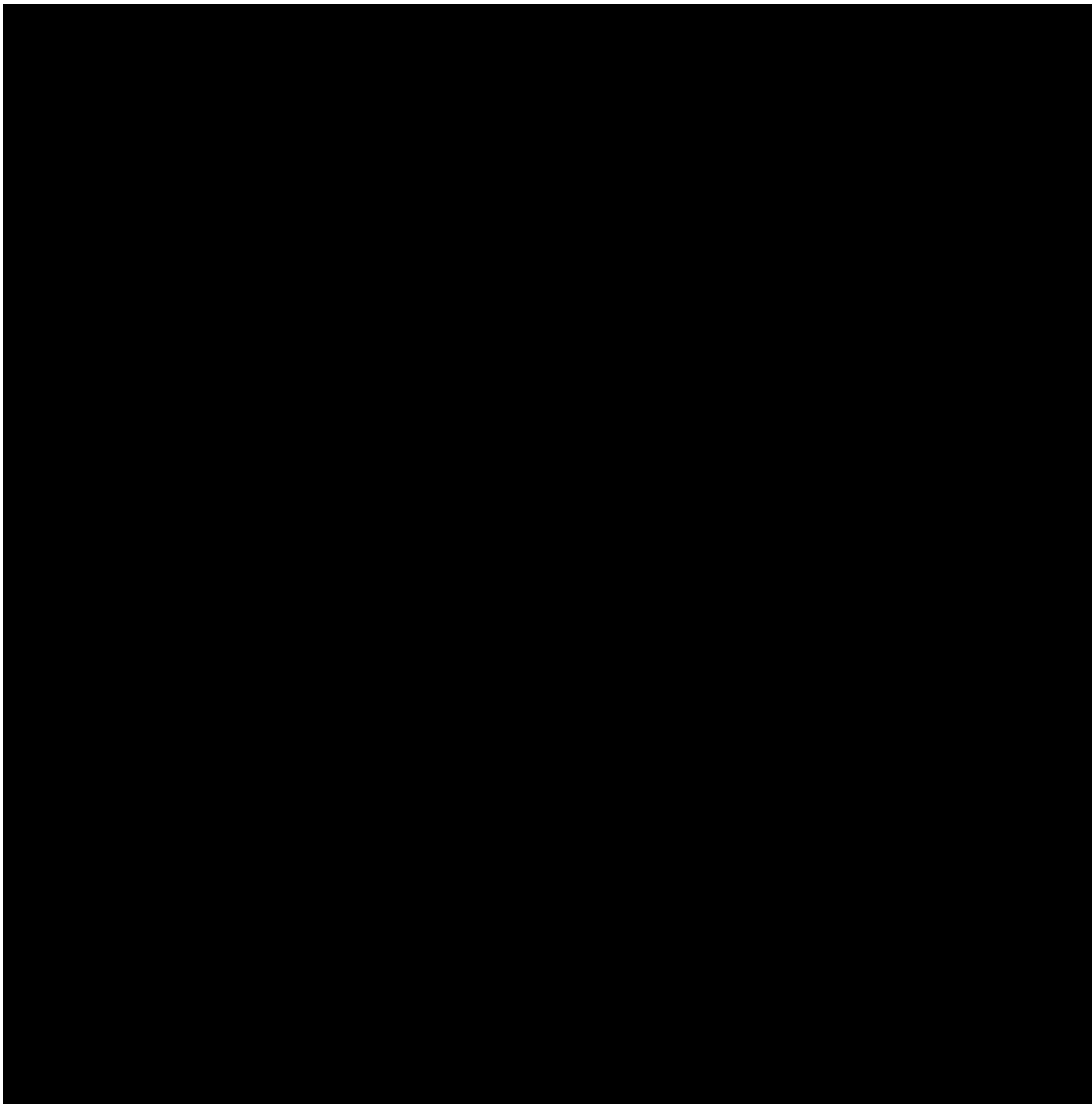
1 before the report was due, something like that.

2 Q. How -- how should deductible claims have  
3 been processed in plaintiff's view?

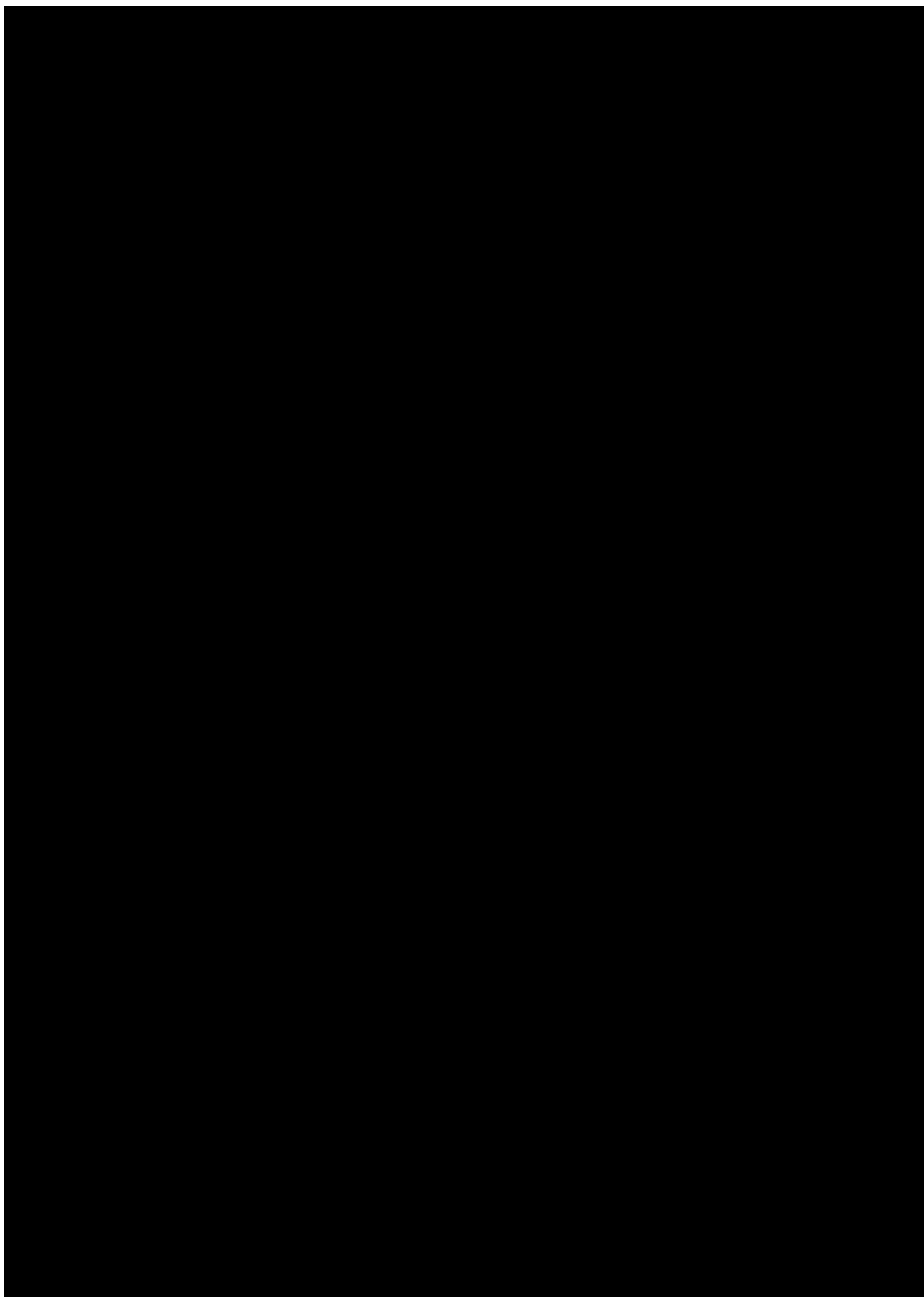
4 MR. KNOTT: Object to the form. Calls  
5 for a legal conclusion.

6 THE WITNESS: I don't think that the  
7 plaintiff has any issue with the deductible

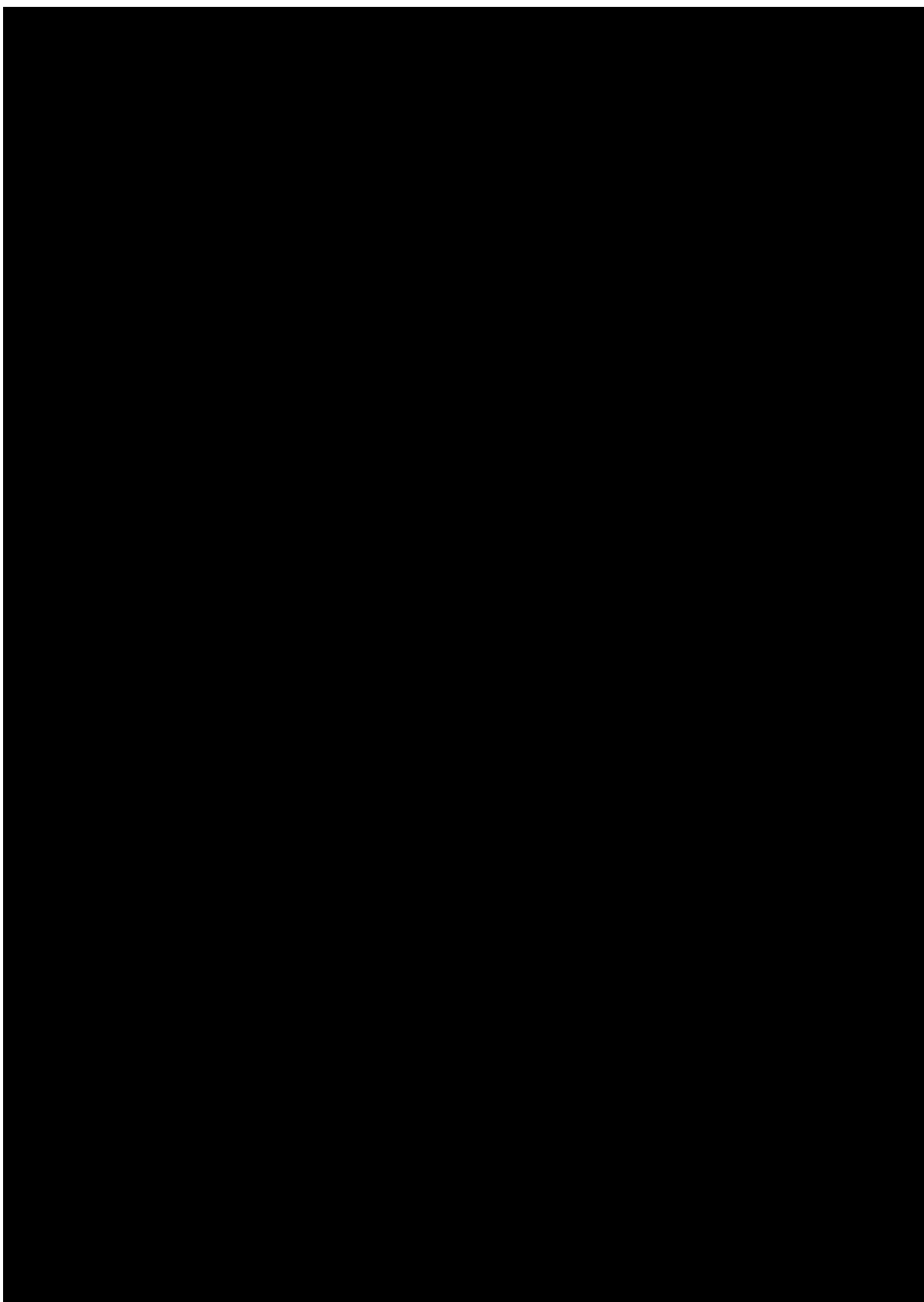
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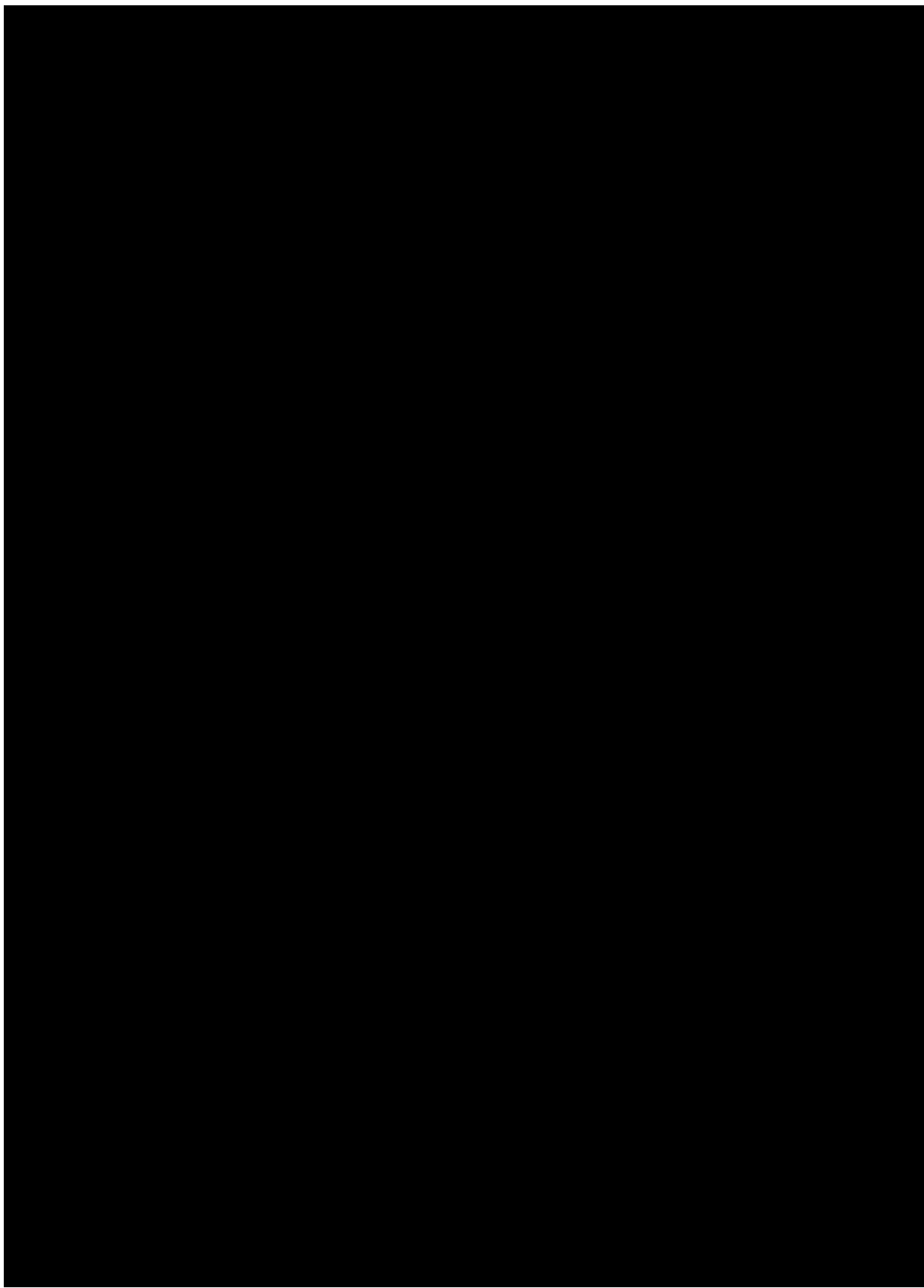
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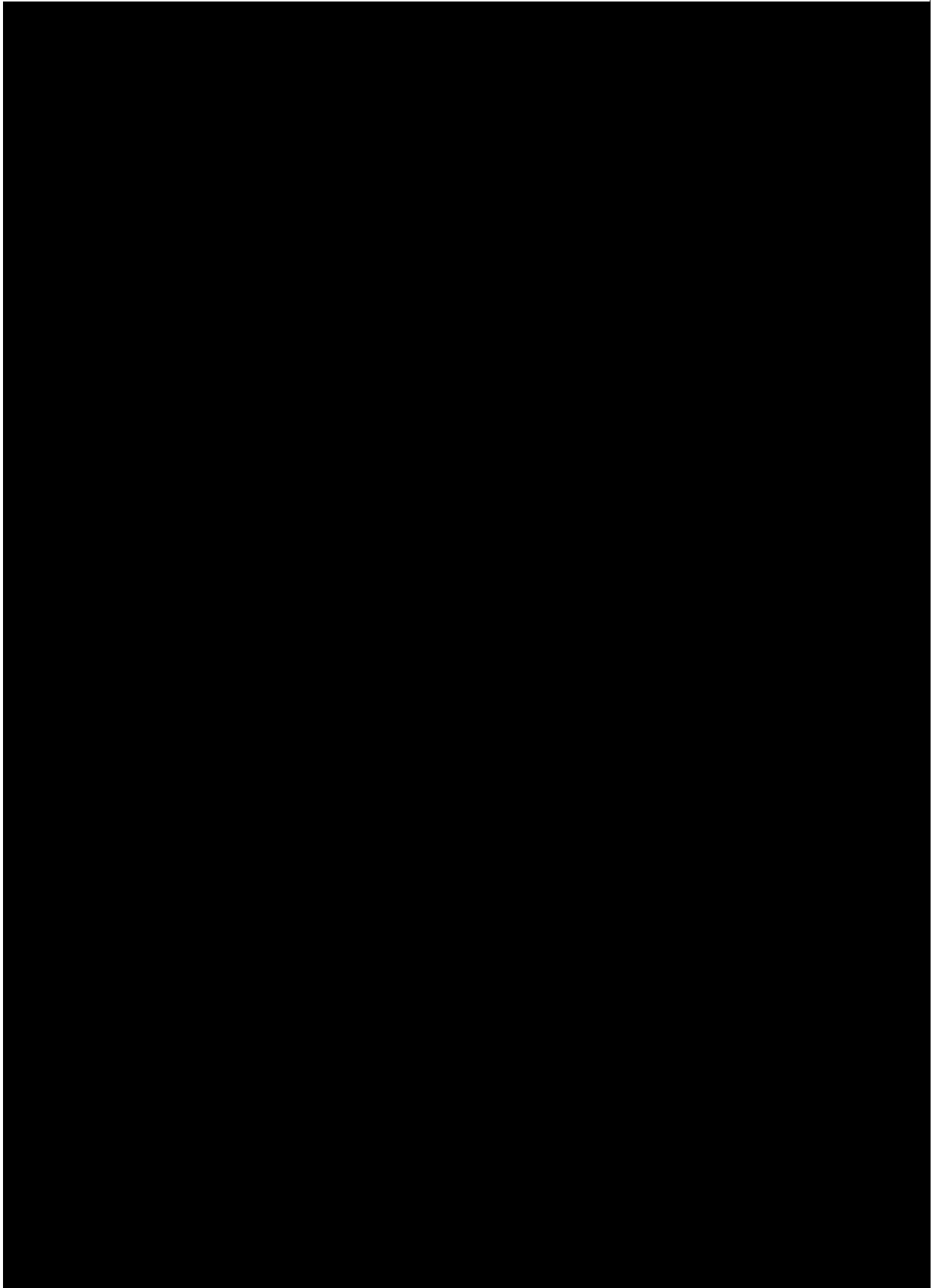
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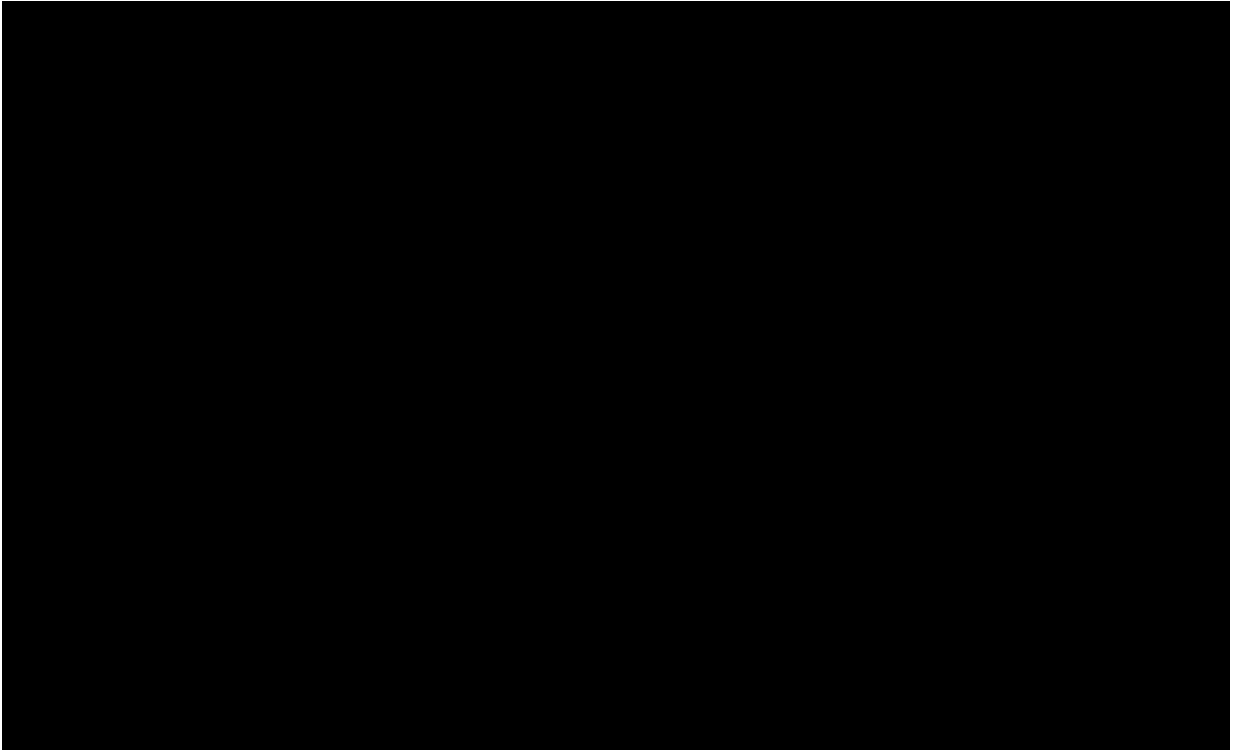
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1 BY MR. SIGLER:



13 BY MR. SIGLER:

14 Q. What's your understanding of plaintiff's  
15 contention on how deductible claims should have  
16 been processed?

17 MR. KNOTT: Object to the form.

18 BY MR. SIGLER:

19 Q. Should deductibles have been credited at  
20 the Optum downstream rate or at the Aetna  
21 per-visit rate?

22 MR. KNOTT: Object to the form.

23 THE WITNESS: I don't know what the  
24 contention is. But I would imagine it's -- it  
25 should have been credited as the provider-allowed



1 amount, at the actual payment -- at the actual  
2 deductible payment.

3 BY MR. SIGLER:

4 Q. And just to -- so we're using the same  
5 terms here, you mean you believe it's Aetna's --  
6 excuse me, strike that.

7 You believe it's plaintiff's position  
8 that the deductible should have been credited at  
9 the Optum downstream rate; is that correct?

10 MR. KNOTT: Object to the form.

11 THE WITNESS: I don't know what  
12 plaintiff is -- plaintiff's contention is, but  
13 that would make sense to me.

14 BY MR. SIGLER:

15 Q. And if that were the case, those members  
16 that we were just discussing who benefited would  
17 come out behind under plaintiff's theory,  
18 correct?

19 MR. KNOTT: Object to the form.

20 THE WITNESS: Correct.

21 BY MR. SIGLER:

22 Q. Did plaintiff's counsel explain why they  
23 wanted you to carve out the deductible claims  
24 from your analysis?

25 MR. KNOTT: Object to the form. That

1 calls for work product. I instruct you not to  
2 answer the question.

3 MR. SIGLER: Are you directing him not  
4 to answer?

5 MR. KNOTT: Yes.

6 BY MR. SIGLER:

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19 Q. Well, do you have an understanding that  
20 you were asked to carve those claims out because,  
21 as we were just discussing, class members  
22 benefited from the way those claims were handled?

23 MR. KNOTT: Object to the form.

24 THE WITNESS: That's not my  
25 understanding.

1 BY MR. SIGLER:

2 Q. Did you have discussions with  
3 plaintiff's counsel about carving those claims  
4 out, the deductible claims?

5 MR. KNOTT: Objection. I instruct you  
6 not to answer that question as it calls for work  
7 product.

8 MR. SIGLER: And Jason, it's a yes or no  
9 question about whether he discussed that topic  
10 with you. My understanding is that your view is  
11 that questions like that do not call for work  
12 product.

13 Are you directing him not to answer?

14 MR. KNOTT: I am because I've heard from  
15 you repeatedly that even asking for the topic  
16 is -- intrudes on the privilege. So I will act  
17 consistently with your position for the time  
18 being.

19 BY MR. SIGLER:

20 Q. Dr. Panis, are you -- is it your  
21 testimony that you were directed by plaintiff's  
22 counsel to carve out these deductible claims and  
23 that you can't explain why you were asked to do  
24 that because plaintiff's counsel is directing you  
25 not to answer?

1           A. No. My understanding is there was no  
2 overcharge; and therefore, I was asked to exclude  
3 them.

4           Q. And did you have other discussions with  
5 plaintiff's counsel about excluding those claims  
6 that you can't speak to because you're being  
7 directed not to answer?

8           A. No.

9           Q. So why were you asked to carve those  
10 claims out? What is the purpose of carving those  
11 claims out?

12          A. Well, that would -- I would have to  
13 speculate what Mr. Knott is thinking. But again,  
14 there was no overcharge. I could include them; I  
15 could exclude them. It would make no difference  
16 for my total overcharges.

17          Q. If you included those claims, wouldn't  
18 you have to account for the benefit to class  
19 members that flowed from those claims?

20               MR. KNOTT: Object to the form. Calls  
21 for a legal conclusion.

22               THE WITNESS: And as I explained, it is  
23 not clear whether a benefit actually accrued to  
24 the member. It would only accrue if the -- if  
25 the member eventually met the deductible and not

1 the max out-of-pocket amount.

2 BY MR. SIGLER:

3 Q. But the only reason it's not clear is  
4 because you haven't done that analysis, right?

5 MR. KNOTT: Object to the form.

6 THE WITNESS: Sure.

7 BY MR. SIGLER:

8 Q. And you haven't done that analysis  
9 because you were directed to carve those claims  
10 out, correct?

11 MR. KNOTT: Object to the form.

12 THE WITNESS: But also because I would  
13 not be able to do it based on the data that I  
14 have.

15 BY MR. SIGLER:

16 Q. What data would you need to figure out  
17 the impact of these deductible claims on class  
18 members?

19 A. I would need to know or -- you know,  
20 there may be several ways of doing it. We talked  
21 about this a few minutes ago.

22 One way to do it is to have the entire  
23 claim population, not just the physical therapy  
24 and chiropractic claims, but also hospital visits  
25 or anything else, that would help me determine

1 whether a member met the deductible and not the  
2 max out-of-pocket amount.

3 Q. Can you think of any other way?

4 A. As I also said earlier, Aetna could just  
5 give me a summary of whether the member  
6 eventually met the deductible and the maximum  
7 out-of-pocket amount.

8 Q. Okay. Paragraph 40 also refers to  
9 another category that I'm going to restate using  
10 the same terminology we've been using today,  
11 which is one where the Optum downstream rate is  
12 higher than the Aetna per-visit rate, correct?

13 A. Correct.

14 Q. How common is that situation?

15 A. There were 9.7 percent of claims in that  
16 category.

17 Q. And when you say 9.7 percent of claims,  
18 you're referring to the entire claim as opposed  
19 to a particular claim line?

20 A. Oh, yes.

21 Q. And did you also carve these claims out  
22 at the direction of counsel?

23 A. Yes.

24 Q. Do you have an understanding of why you  
25 were directed to carve these claims out?

1           A.   There could be some discussion over  
2   whether an undercharge should be deducted from a  
3   damage amount, but that is a legal issue and I am  
4   not here to determine which claims or offsets  
5   should be part of the damages.

6           Q.   As an economist, you agree that those  
7   claims where the Optum downstream rate was higher  
8   than the Aetna per-visit rate could be viewed as  
9   undercharged claims?

10           MR. KNOTT:   Object to the form.

11           THE WITNESS:   They could be  
12   undercharged.   Yes.

13   BY MR. SIGLER:

14           Q.   And if those claims were included in the  
15   analysis, there would be some members who  
16   benefited from the way the Aetna-Optum  
17   relationship was structured on those claims,  
18   correct?

19           MR. KNOTT:   Object to the form.

20           THE WITNESS:   Possibly.

21   BY MR. SIGLER:

22           Q.   Some members and some plans, correct?

23           A.   Possibly.   Yes.

24           Q.   Can you think of any way that they would  
25   not have benefited from the Optum downstream

1 rate --

2 A. I'm sorry, I thought you met on net as  
3 in the only claims that someone had were all  
4 undercharges.

5 No. I believe many members would  
6 have -- would face aggregate overcharges that  
7 would be reduced as a result of these types of  
8 claims with undercharges.

9 Q. And on those specific undercharge  
10 claims, those members and plan sponsors would  
11 have benefited from the way the Aetna-Optum  
12 relationship was structured, correct?

13 MR. KNOTT: Object to the form.

14 THE WITNESS: Yes.

15 BY MR. SIGLER:

16 Q. And they would be worse off under  
17 plaintiff's theory by which the Optum downstream  
18 rate would be used to calculate their  
19 responsibilities, correct?

20 MR. KNOTT: Object to the form.

21 THE WITNESS: Yes.

22 BY MR. SIGLER:

23 Q. Did Aetna or Optum gain anything on  
24 these claims where the Optum downstream rate is  
25 higher than the Aetna per-visit rate?



1           A. No. I believe that Optum, in fact, lost  
2 money on those claims.

3           Q. And as an economist, would it make sense  
4 to consider that loss to Optum in figuring out  
5 a -- to offset that loss to Optum against the  
6 gain that you calculated based on other claims?

7           MR. KNOTT: Object to the form. Calls  
8 for a legal conclusion.

9           THE WITNESS: That's exactly -- it is a  
10 legal issue. As an economist, yes, I would  
11 subtract. I would offset some of those  
12 overcharges. But whether that's a -- whether  
13 that's a -- legally acceptable, I don't know  
14 that.

15 BY MR. SIGLER:

16           Q. And you didn't offset them because  
17 plaintiff's counsel directed you not to; is that  
18 correct?

19           A. Correct.

20           Q. When did you take the step to exclude  
21 these claims that we're talking about where the  
22 Optum downstream rate is higher than the Aetna  
23 per-visit rate?

24           A. It was part of the same step where I was  
25 instructed to focus only on claims where the

1 downstream rate is lower than the per-visit rate.

2 Q. And you said that was around a month  
3 before your report?

4 A. That's -- it's a very rough guess.

5 Q. But you also said earlier that you did  
6 an earlier calculation of overcharges that  
7 included deductible claims, correct?

8 A. Yes.

9 Q. Did you do an earlier calculation that  
10 included these claims involving a higher Optum  
11 downstream rate?

12 A. Yes.

13 Q. And in that earlier calculation, did  
14 those claims partially offset the alleged  
15 overcharges on the other claims?

16 MR. KNOTT: Object to the form.

17 THE WITNESS: Yes.

18 BY MR. SIGLER:

19 Q. And were there some members who only had  
20 claims involving higher Optum's downstream rates?

21 A. I don't know.

22 Q. Did you provide a calculation to  
23 plaintiff's counsel that included those claims  
24 involving higher Optum downstream rates?

25 MR. KNOTT: Object to the form. I would

1 instruct you not to answer that because I think  
2 asking for preliminary calculations runs afoul of  
3 work product.

4 BY MR. SIGLER:

5 Q. Did you consider those earlier  
6 calculations in connection with your work in this  
7 case?

8 A. Well, not for the final report. It was  
9 part of the exploratory analyses.

10 Q. But you considered those calculations,  
11 correct?

12 A. Yes.

13 Q. Do you still have them?

14 A. I think so.

15 Q. Did you run those calculations before  
16 you started drafting your report?

17 A. Yes.

18 Q. So they weren't part of your draft  
19 report, correct?

20 A. No.

21 MR. KNOTT: Object to the form.

22 BY MR. SIGLER:

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Q. And what did it show in terms of there being some claims where members were coming out ahead and some claims where members were coming out behind under plaintiff's theory? Were there some members coming out ahead and some coming out behind in that earlier analysis?

MR. KNOTT: Object to the form.

THE WITNESS: My calculations have been at the claim level. And you're asking for aggregations of members, I did not do that.

BY MR. SIGLER:

Q. Do you have an understanding of why you were asked to not use the calculation that you did originally and instead substitute this calculation based on a smaller claims population excluding hundreds of thousands of claims?

MR. KNOTT: Object to the form.

THE WITNESS: I presume it relates to legal theories that plaintiff is developing.

BY MR. SIGLER:

Q. Did they explain those legal theories to

1     you?

2             A.    No.

3             Q.    But the exclusion of these claims and  
4     the new analysis was not based on your analysis  
5     as an economist that it made sense to do it that  
6     way, correct?

7             A.    Correct.

8             MR. KNOTT:   Object to the form.

9     BY MR. SIGLER:

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1 BY MR. SIGLER:

2 Q. Dr. Panis, if you turn to the last page  
3 of your report, page 14.

4 A. Yes.

5 Q. This is the summary section that you  
6 directed me to earlier when I asked where your  
7 opinions were in your report.

8 Now, the three paragraphs in this  
9 section discuss the overcharge and gain  
10 calculations that we were just discussing before  
11 the break, correct?

12 A. Correct.

13 Q. And those overcharge and gain  
14 calculations are based on a population of claims  
15 that was limited based on direction from counsel,  
16 correct?

17 A. Correct.

18 Q. And the calculations themselves were  
19 also based on directions from counsel, correct?

20 MR. KNOTT: Object to the form.

21 THE WITNESS: I was asked to calculate  
22 overcharges as defined by counsel. Sure.

23 BY MR. SIGLER:

24 Q. And other than those overcharge and gain  
25 calculations, are there any other opinions here

1 in this section, or is that an accurate summary  
2 of your opinions in the case?

3 MR. KNOTT: Object to the form.

4 THE WITNESS: I believe it's an accurate  
5 summary.

6 BY MR. SIGLER:

7 Q. Now, by excluding 30 percent of the  
8 claims, you are excluding from your analysis some  
9 plans and members who may have benefited from the  
10 Aetna-Optum relationship, correct?

11 MR. KNOTT: Object to the form. It's  
12 vague.

13 THE WITNESS: Some plans and members who  
14 may have been undercharged, yes.

15 BY MR. SIGLER:

16 Q. And those same plans and members may be  
17 worse off under the plaintiff's theory by which  
18 Optum downstream rates should have been used,  
19 correct?

20 MR. KNOTT: Object to form.

21 THE WITNESS: On net, perhaps some would  
22 have been worse off. It's an easy calculation  
23 that I have not yet performed.

24 BY MR. SIGLER:

25 Q. And then for some plans and members that

1 are still in your analysis as part of the  
2 population that you analyzed, you have excluded  
3 some of those class members' claims, correct?

4 A. Correct.

5 Q. So for those class members who may have  
6 been in for some claims and out for others, you  
7 would not have, in your analysis, a complete  
8 picture of that class member's claims experience,  
9 correct?

10 MR. KNOTT: Object to the form.

11 THE WITNESS: Correct.

12 BY MR. SIGLER:

13 Q. And so you would not also, in your  
14 analysis, have a complete picture of the impact  
15 of the Aetna-Optum relationship on those plan  
16 members and plan sponsors, correct?

17 MR. KNOTT: Object to the form. It's  
18 vague.

19 THE WITNESS: I believe it's correct.

20 BY MR. SIGLER:

21 Q. Now, is it possible for some of those  
22 plans and plan sponsors who are in your analysis  
23 but only for some claims that if you looked at a  
24 complete picture, that those plan members and  
25 plan sponsors, some of them would have come out



1 ahead based on the Aetna-Optum relationship?

2 MR. KNOTT: Object to the form.

3 THE WITNESS: It's possible that some  
4 would have come out ahead. Sure.

5 BY MR. SIGLER:

6 Q. But you haven't -- your analysis  
7 wouldn't tell us which ones, correct?

8 A. That is correct.

9 MR. KNOTT: Object to the form.

10 THE WITNESS: And, indeed, my analysis  
11 is entirely based on claims, not on the claim  
12 experience of a person.

13 BY MR. SIGLER:

14 Q. Your analysis is a claims analysis in  
15 the aggregate, as opposed to an analysis of the  
16 specific impact on a particular plan or plan  
17 member, correct?

18 MR. KNOTT: Object to the form.

19 THE WITNESS: Yeah. Again, it's very  
20 easy to disaggregate by members. It's a little  
21 bit more involved to disintegrate by plan. But I  
22 have not done it yet.

23 BY MR. SIGLER:

24 Q. But to look at the impact of the  
25 Aetna-Optum relationship on a member, you would

1 have to look at that member's complete claims  
2 experience and the evolution of claims over the  
3 course of the year to figure out the impact of  
4 deductibles and other aspects of that member's  
5 claims experience, correct?

6 MR. KNOTT: Object to the form. Vague.

7 THE WITNESS: As an economist, I believe  
8 you're correct. Legally, I don't know whether  
9 such offsets as you're implying are appropriate.

10 BY MR. SIGLER:

11 Q. Are you providing any opinions about  
12 whether the Aetna-Optum relationship was in the  
13 interest of any plan member or plan?

14 A. I am not, no.

15 Q. And as an economist, you agree that  
16 determining whether the Aetna-Optum relationship  
17 was in the interest of any particular member or  
18 plan, you would need to look at a variety of  
19 factors specific to that member or plan?

20 MR. KNOTT: Object to the form.

21 THE WITNESS: It would not require a  
22 member-by-member individualized analysis, if  
23 that's what you're asking. It would require a  
24 formulaic approach that includes a bit more than  
25 I've included for this purpose.

1 BY MR. SIGLER:

2 Q. To determine the -- whether the  
3 Aetna-Optum relationship was in the interest of a  
4 particular plan member or plan, would you be  
5 interested in knowing whether the relationship  
6 caused that member's payments to go up or down on  
7 the services that they received?

8 MR. KNOTT: Object to the form.

9 THE WITNESS: Yes.

10 BY MR. SIGLER:

11 Q. And that's not something you've looked  
12 at in connection with this case, correct?

13 A. Correct.

14 MR. SIGLER: This is already marked.

15 BY MR. SIGLER:

16 Q. Dr. Panis, you've been handed a document  
17 that was pre-marked Exhibit 144 from a previous  
18 deposition.

19 Can you take a look at this document and  
20 tell me whether you recognize it?

21 A. I believe I've seen it before. I don't  
22 think it contains anything that -- on which I  
23 relied for my report.

24 Q. If you turn to the very back of the  
25 document, the last two pages --

1 case a situation where there is a per-member  
2 per-month rate paid to Optum, but that rate is  
3 billed back to self-funded plans?

4 MR. KNOTT: Object to the form.

5 THE WITNESS: I presume it would depend  
6 on the language in the ASO contract between Aetna  
7 and the self-insured plan. I presume that it's  
8 possible, although it would surprise me.

9 BY MR. SIGLER:

10 Q. Is that a but-for world that you  
11 considered in connection with this case?

12 A. No.

13 Q. Is a potential but-for world in this  
14 case one where members and plan sponsors' shares  
15 of allowed amounts are calculated using the Optum  
16 downstream rate?

17 MR. KNOTT: Object to the form.

18 THE WITNESS: Could you repeat it?

19 (The reporter read the record as  
20 requested.)

21 THE WITNESS: I believe that's the  
22 but-for world that I've been assuming.

23 BY MR. SIGLER:

24 Q. And in your review of the data produced  
25 in this case, you understand that Aetna does not

1           A. This is possible. I haven't  
2     investigated it, but it's very easy to pass on an  
3     extra field.

4           Q. And very easy. Based on what experience  
5     are you relying when you say "very easy"?

6           A. My experience with IT systems that can  
7     pass on an extra field.

8           Q. And you're not familiar with Aetna's  
9     systems or Optum's systems, correct?

10          A. Correct.

11          Q. And do you know whether Optum would be  
12     willing to give Aetna its contracted downstream  
13     rates with treating providers?

14          A. I don't know that.

15          Q. Before this case, Dr. Panis, had you run  
16     into the use of per diem or per-visit rates in  
17     the healthcare industry?

18          A. I think the Medicare perspective payor  
19     system is similar to a per-visit rate, per  
20     hospital stay rate. Yes.

21          Q. And is that a reimbursement methodology  
22     that has been commonly used in the healthcare  
23     industry for hospitals?

24          A. Since 1993, I think. Yes.

25          Q. And when it's used for hospitals, when

1 hospitals are compensated based on a flat rate  
2 for a particular visit or scope of services,  
3 those rates are supposed to cover all of the  
4 hospital's costs associated with those services,  
5 correct?

6 MR. KNOTT: Object to the form.

7 THE WITNESS: Yeah. Correct. Except,  
8 again, in extraordinarily costly cases where  
9 there may be an additional outlier payment.

10 BY MR. SIGLER:

11 Q. And for the hospital, the costs  
12 associated with that hospital's services would  
13 include not just the professional services but  
14 also the management of those services, the  
15 supervision, and other costs associated with  
16 running the hospital, correct?

17 MR. KNOTT: Object to the form.

18 THE WITNESS: Correct.

19 BY MR. SIGLER:

20 Q. And in the case of those per-visit rates  
21 being paid to hospitals, there's nothing improper  
22 about hospitals, in your view, being compensated  
23 for those costs, correct?

24 A. No, there's nothing improper. And  
25 similarly, if the hospital subcontracts certain

1 services, the cost of those services would need  
2 to be covered by the per-visit rate.

3 Q. And the costs associated with running a  
4 hospital, such as keeping it clean, keeping the  
5 lights on, making sure there's a management  
6 structure in place, all of those costs are built  
7 into the hospital's per-visit rates, correct?

8 MR. KNOTT: Object to the form.

9 THE WITNESS: Right.

10 BY MR. SIGLER:

11 Q. In your work relating to skilled nursing  
12 facilities, are they also compensated based on a  
13 per-visit rate?

14 A. There are variations, depending on the  
15 needs of the patients.

16 Q. And what are the most -- what's the most  
17 common way that skilled nursing facilities are  
18 compensated?

19 A. There's so-called re -- RUGs, R-U-G,  
20 resource utilization groups, where an assessment  
21 is made of the needs of a patient.

22 So, for example, certain patients can  
23 feed themselves, certain cannot. And the  
24 compensation is a fixed amount, depending on the  
25 abilities and the needs of the patients.

1 Q. And --

2 A. Fixed amount per day. Not per stay, but  
3 per day.

4 Q. So it's a per diem, correct?

5 A. Yes, yes.

6 Q. And in the case of per diem rates paid  
7 to skilled nursing facilities, are those per diem  
8 rates constructed in a way to compensate the  
9 skilled nursing facilities for all of their costs  
10 associated with that date of service?

11 A. Yes.

12 Q. And that would include not just the  
13 professional services of the nurses but also the  
14 management of those services, the cost of keeping  
15 the lights on and running the facility, correct?

16 A. Correct.

17 MR. KNOTT: Object to the form.

18 BY MR. SIGLER:

19 Q. And in your view, there's nothing  
20 improper about that compensation structure,  
21 correct?

22 A. It sounds like a legal issue --

23 MR. KNOTT: Object to the form.

24 THE WITNESS: -- but I don't believe  
25 there's anything improper, no.



1 BY MR. SIGLER:

2 Q. It's common -- it's been common in the  
3 healthcare industry for years, correct?

4 A. Yes.

5 MR. SIGLER: Let's take a break.

6 VIDEO TECHNICIAN: Off the record at  
7 12:27.

8 (A recess was taken.)

9 VIDEO TECHNICIAN: Media unit 5. Back  
10 on the record at 1:12.

11 BY MR. SIGLER:

12 Q. Dr. Panis, we talked earlier today about  
13 the fact that Aetna has contracts with  
14 administrative services -- excuse me,  
15 administrative services contracts with  
16 self-funded plan sponsors, right?

17 A. Yes.

18 Q. And we talked about the fact that you  
19 haven't reviewed those contracts.

20 Have you reviewed any other documents  
21 reflecting communications between Aetna and  
22 self-funded plan sponsors concerning anything  
23 having to do with the Optum relationship?

24 MR. KNOTT: Object to the form.

25 THE WITNESS: I have not.